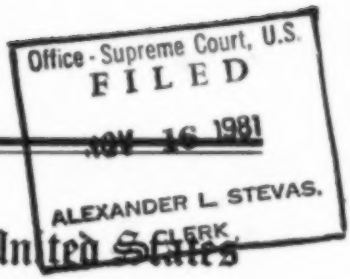
# Petition

81-939

No.




IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

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E.C. MILDRED RAMSEY AND STEVENS PEOPLE AND FRIENDS FOR FREEDOM,

*Petitioners,*

v.

RAYMOND J. DONOVAN, SECRETARY DEPARTMENT OF LABOR,

*Respondent.*

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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## QUESTIONS PRESENTED

1. Whether enforcing the Secretary of Labor's subpoena for membership and contributor lists of the petitioner organization, in the face of an undisturbed finding of fact that disclosure of this information would result in harassment of the members of the organization and would "chill" them in the exercise of their First Amendment rights, is inconsistent with the First Amendment and cases from this Court mandating a "strict scrutiny" test for cases of this kind.

2. Whether the distinction made by the Court of Appeals between employees of J.P. Stevens Company and non-employees is consistent with the broad protective definition of "employee" under the National Labor Relations Act and with cases from the Court and other Courts of Appeals applying that Act.

3. Whether the distinction made by the Court of Appeals is consistent with the purpose and the legislative history of the Labor-Management Reporting and Disclosure Act and with cases from this Court and other Courts of Appeals applying that Act.*

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*The case here was consolidated in the Fourth Circuit with two other cases in which the Secretary of Labor was also appellant. *Marshall v. John G. Hutchens*, No. 80-1715 and *Marshall v. J.P. Stevens Employees Education Committee, Eugene Ray Patterson, Wilson Lambert, Robert A. Valois, and Robert T. Click*, No. 80-1716. The Amalgamated Clothing and Textile Workers Union appeared in the Court of Appeals as amicus curiae.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The Petitioners, Mildred Ramsey and Stevens People and Friends for Freedom, respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on August 4, 1981. A petition for rehearing was denied on September 16, 1981.

## OPINIONS BELOW

Appendix (1b).[1] The opinion of the United States Court of Appeals for the Fourth Circuit, not yet reported, also appears in the Appendix (1c).

## JURISDICTION

The judgment of the United States Court of Appeals was entered on August 4, 1981, and a petition for rehearing was denied on September 16, 1981. This petition is filed within 60 days of entry of the order denying the petition for rehearing. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution and all relevant portions of the National Labor Relations Act, 29 U.S.C. §151-169, and the "persuader activities" sections of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § §433-39, 521, are involved in this case. The pertinent text of these provisions is set out in the Appendix (1a).

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[1] "a" references in this Petition are to the accompanying appendix. "J.A." references are to the separately printed Joint Appendix in the United States Court of Appeals for the Fourth Circuit.

## STATEMENT OF THE CASE

The Amalgamated Clothing and Textile Workers Union ("ACTWU") has attempted to organize the employees of the J.P. Stevens Company plant in which petitioner Mildred Ramsey is an employee. Petitioner organization Stevens People and Friends for Freedom (hereinafter "SPFF") was organized to express an opinion on the question of whether employees of the J.P. Stevens Company plant should be represented by ACTWU.

SPFF is a voluntary pro-employee association of workers engaged in providing the employees of J.P. Stevens Company with information concerning their terms and conditions of employment. The group also provides a vehicle for advocacy of non-union status, and the group provides the concomitant protection of anonymity (4b). Petitioner Mildred Ramsey is chairperson of SPFF.

SPFF advances the theory of individual rights, worker integrity, and local control of workers over their working conditions. SPFF provides an alternative viewpoint to the compulsory unionism viewpoint advanced by the union officials who seek control over the working conditions and terms of employment at Stevens' mills.

The Secretary of Labor began this cause under alleged statutory authority granted by Congress. Under §203(a)(2) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §433(a),(4b), an employer is required to disclose to the Secretary of Labor:

> . . .any payment (including reimbursed expenses) to any of his employees or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the

> right to organize and bargain collectively through representatives of their own choosing.

Furthermore, §203(b)(1) of the Act, 29 U.S.C. §433(b)(1) requires:

> Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly . . .to persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing. . [to file a report with the Secretary of Labor] (5a).

Thus, if SPFF made expenditures "pursuant to an agreement or arrangement" with J.P. Stevens Company, or if the Company had contributed money, goods, or services, to SPFF, both the Company and SPFF would have been required to report such a transaction to the Secretary. Since expenditures were *not* made "pursuant to any agreement or arrangement" with J.P. Stevens Company, and since the Company did *not* contribute to SPFF, no such report was required.

Section 601 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §421, (8a),gives the Secretary of Labor the authority to investigate by subpoena when he believes it necessary to determine whether any person has violated the reporting provisions of the Act. All reports to the Secretary about "persuader activities" are disclosable as public information. 29 U.S.C. §435, (7a).

Since SPFF is a small, unaffiliated association that has been effective in convincing J.P. Stevens Company employees that it was not in their best interests to be represented by the ACTWU, it has been constantly under attack. In response to the success of this small band of workers, and despite the fact that there was *not one iota* of evidence that

J.P. Stevens Company had contributed to SPFF or that the SPFF expenditures were made "pursuant to any agreement or arrangement" with the Company, ACTWU officials prompted the Secretary of Labor to invoke his investigatory powers under §601 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §521 (8a), to compel disclosure of the members and contributors, minutes and records of this successful group. *See* Appellees' Supplemental Brief to the Court of Appeals at 5a. Petitioner objected to the administrative subpoena that subsequently issued, on the grounds that compelling the disclosure of this information was inconsistent with the Constitution, several rulings of the Supreme Court, and the Labor-Management Reporting and Disclosure Act (J.A. at 39). This objection was rejected by the Secretary (J.A. at 38). The Secretary contended that he had statutory authority to investigate employees and their organizations. (2b).

Subsequently, the Secretary sought the aid of the United States District Court for the District of South Carolina for enforcement of his subpoenas *in their entirety*, seeking the list of contributors, their addresses, dates and amounts contributed, records of receipts and disbursements, bank statements, all correspondence, records, minutes of meetings, and any agreements, requests or contracts to represent or assist the J.P. Stevens Company. (J.A. at 12). The Secretary argued that the revelation and disclosure of these materials to him best protects worker protected activity under the National Labor Relations Act, 29 U.S.C. § §151-169 (Secretary's Court of Appeals brief at 16).

Petitioners, in response, raised their First Amendment rights and explicit statutory rights under §7 of the National Labor Relations Act, 29 U.S.C. §157, (3a), as privileges and defenses under law. In addition, petitioner Mildred

Ramsey presented undisputed evidence of two separate death threats on her life by unnamed individuals. (J.A. at 52-53). These written threats stated that Mrs. Ramsey's life would be taken if she did not cease her efforts to inform her fellow workers of their protected rights under the law. The District Court in its opinion found that there was imminent and real threat of danger to the lives of members of SPFF if the government's subpoenas were enforced. (6d). It also held that disclosure of the identities of SPFF members would have a "chilling effect" on their associational rights (6b). These findings were later upheld by the Court of Appeals (12d).

The government, however, appealed the District Court's decision in July, 1980, and advocated that petitioner's First Amendment right of association, her protected activity rights under the National Labor Relations Act, and the imminent danger of physical harm to SPFF members did not outweigh the Secretary's interest in enforcing the Labor-Management Reporting and Disclosure Act (Secretary's Court of Appeals brief at 15). The Court of Appeals agreed in part.

Although the Court of Appeals explicitly upheld the District Court's finding of physical danger (6d), and that there would be a deterrent effect on the exercise of First Amendment rights, it held that the government could obtain a list of SPFF members who were *not* non-supervisory employees of J.P. Stevens Company. The Court of Appeals came to this conclusion because it held that §603(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §523(b), (8a), specifically excluded investigatory coverage of workers engaged in protected activities under the National Labor Relations Act. Consequently, the Court of Appeals held that the Secretary could acquire any information he desired concerning non-employees.

This holding by the Court of Appeals was made without considering the constitutional protection applicable to non-Stevens SPFF members or the broad definition of "employee" under §2(3) of the National Labor Relations Act, 29 U.S.C. §152(3), (2a). That definition provides that the term employee "shall not be limited to the employees of a particular employer."

## REASONS FOR GRANTING THE WRIT

### I. THE COURT OF APPEALS DISREGARDED THE STRICT SCRUTINY TEST APPLICABLE TO INVESTIGATIONS OF PROTECTED ACTIVITIES UNDER THE FIRST AMENDMENT

This case presents facts analogous to those which forced action by this Court in *NAACP v. Alabama*, 357 U.S. 449 (1958), to protect First Amendment rights of association. In that case, the Court prevented the State of Alabama from compelling the disclosure of membership lists of the local NAACP chapter under the guise of enforcing state tax laws.

In the case at bar, the Secretary of Labor seeks the membership lists, contributor lists and records of the SPFF association on the grounds that he has the authority to do so under §601 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §521, (8a). That Act empowers the Secretary of Labor to investigate by subpoena when he believes a violation of the reporting provisions of the Act may be occurring, so long as the subpoena does not abridge the exercise of "rights, privileges, immunities or defenses" . . ."of any person under the National Labor Relations Act,

as amended." 29 U.S.C. § §521, 523(b), (8a). The Court of Appeals has granted the Secretary access to the information he seeks, despite the District Court's finding (not disturbed on appeal) that compelling the disclosure of this information will have a "chilling effect" on SPFF members.[2]

This Court has established in a long series of cases that the First Amendment freedom of association stands as a bar to a government attempt to uncover the identity of citizens who have come together to seek the aid, comfort, and anonymity that an association can provide. *See, e.g., Gibson v. Florida Legislative Investigative Commission*, 372 U.S. 539 (1963); *Shelton v. Tucker*, 364 U.S. 479 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958). This finding recognizes that the freedom of association is a corollary of the rights explicitly protected by the First Amendment. Thus, membership and contributor lists have been protected from compelled disclosure to the government, even when the attempts to compel disclosure have been instituted under a variety of benign disguises. *See, e.g., Gibson, supra.* (state legislative investigation law); *Louisiana v. NAACP*, 366 *U.S. 293 (1961) (business registration law); Bates v. Little Rock*, 361 U.S. 516 (1960) (municipal licensing law); *NAACP v. Alabama, supra.* (state tax law).

The Court of Appeals held that First Amendment rights were indeed involved here and that, therefore, the "strict scrutiny" test applied(13d). The Court of Appeals also accepted the District Court's finding that disclosure to the government "of the identities of their [SPFF] members and contributors will have a chilling effect on their associational

[2]The questions presented in this case are not moot. The Secretary of Labor promptly sought to enforce his new powers granted by the Court of Appeals. He now demands the membership and contributor lists, as circumscribed, of SPFF and the testimony of Mildred Ramsey and other undesignated SPFF members before the United States District Court for the District of South Carolina. Case No. M-80-2-42 (October 5, 1981).

rights." (12d). The Court of Appeals, however, failed to apply this Court's "strict scrutiny" test and developed one that it felt "fit" for this case.

The activities of Mildred Ramsey and SPFF are for the purpose of communicating their ideas ("speech" for purposes of the First Amendment), but it may be conceded, *arguendo*, that some of the activities (fundraising, etc.) are "conduct" not directly covered by the First Amendment. This Court has set down strict rules for determining the constitutionality of government activities that regulate or impinge upon conduct mixed with speech:

> [A] government regulation [of conduct mixed with speech] is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial government interest; if the governmenal interest is unrelated to the suppression of free expression; and if the *incidental* restriction or alleged First Amendment freedoms is *no greater than is essential* to the furtherance of that interest.

*United States v. O'Brien*, 391 U.S. 367, 377 (1968) (emphasis supplied).

In *Kusper v. Pontikes*, 414 U.S. 51, 58 (1973), this Court further refined its earlier decisions on association, *viz.*, *Bates v. Little Rock*, 361 U.S. 516 (1960) and *NAACP v. Alabama*, 357 U.S. 449 (1958). In these decisions, the Court was very clear in holding that a state cannot pursue a governmental interest in a way "that unnecessarily restrict[s] protected liberty . . .if the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental liberties." *Kusper*, 424 U.S. at 59, *citing Dunn v. Blumstein*, 405 U.S. 343 (1972) and *Shelton v. Tucker*, 364 U.S. 479, 488 (1960).

The government has an interest in ensuring that "persuader

activities" do not go unreported. It is clear, however, based upon the undisturbed findings of the District Court, that the enforcement of the Secretary's subpoena would cause a restriction ("chilling effect") upon the First Amendment freedoms of Mildred Ramsey and the other SPFF members that would be by no means "incidental." Moreover, there has been no showing that the restriction, by the *method* chosen by the Secretary and the Court of Appeals, is "no greater than is essential to the furtherance" of the governmental interest in ensuring that "persuader activities" are reported. If the Secretary's interest is in determining whether J.P. Stevens Company is financially supporting SPFF, he should subpoena the business records of the Company. That method would further the governmental interest just as effectively while impinging much less upon First Amendment freedoms.

The Secretary in this case clearly chose a method of investigation that would unnecessarily restrain associational rights. His appellate brief, to the Court of Appeals at p. 17, and his argument before the District Court reveal that he did not try to seek the information he desires in other ways. In fact, he conceded that the employer here, J.P. Stevens Company, could provide him with the information he seeks from SPFF; but he contended to the District Court and Court of Appeals that such a route would be more burdensome, and so he has made no attempt to use alternative methods. Clearly, therefore, the Secretary has not shown that the restriction on First Amendment freedoms inherent in the method he chose is "no greater than is *essential.*"

The Court of Appeals responded to the invocation of the "strict scrutiny" test by merely substituting a "legitimate governmental interest" test. (12d). Upon that basis, it authorized disclosure of the membership and contributor

lists of SPFF. Thus, the Court of Appeals made short shrift of the Secretary's responsibility to follow the law as laid down by this Court. The Court of Appeals recognized the guidelines of the "strict scrutiny" test, but rejected their applicability to an investigation by the Secretary under the authority of the Labor-Management Reporting and Disclosure Act.

## II. THE DECISION OF THE COURT OF APPEALS CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS IN THE DISTRICT OF COLUMBIA, FIFTH AND EIGHTH CIRCUITS

The Fourth Circuit has chosen to remove the constitutional protection given to names of members of and contributors to the petitioner employee organization. This choice directly conflicts with decisions of this Court and recent decisions in other courts of appeal. All these cases were presented to the Fourth Circuit and silently rejected by that Court.

Recently, in *Abood v. Detroit Board of Education*, 431 U.S. 207 (1977), this Court reaffirmed the right of freedom of association and the protection afforded to membership and contributor lists of worker associations. *Abood*,431 U.S. at 241 n.42. This protection is afforded to preserve the opportunity of citizens to privately discuss matters of personal importance.

> "[G]roup association is protected because it enhances '[e]ffective advocacy.' The right to join together 'for the advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for

> funds are often essential if 'advocacy' is to be truly or optimally effective."

*Buckley v. Valeo*, 424 U.S. 1, 65-66 (1976) (citations omitted)

Members contribute to SPFF for the purpose of spreading a political message to the community and government, a freedom guaranteed by the First Amendment. As this Court held in *Buckley*, "[m]aking a contribution . . .enables like-minded persons to pool their resources in furtherance of common political goals." *Buckley*, 424 U.S. at 22.

In *Buckley*, an election case, the Court recognized that disclosure requirements create a more onerous threat to First Amendment rights when applied to minor parties and small movements:

> These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within and without the political arena.

*Buckley*, 424 U.S. at 71 (footnotes omitted).

Although the Court held that a blanket exemption for minor parties was not constitutionally required, it concluded that the disclosure requirements of the Federal Election Campaign Act cannot be constitutionally applied where the record demonstrates that disclosure will expose contributors and members of the organization to a substantial threat of harassment, since disclosure in such circumstances would impermissibly deter protected associational activity. *Buckley*, 424 U.S. at 72. In several cases after *Buckley*, minor parties have made a showing sufficient to justify exemption from the reporting requirements. *See, e.g.*, Federal Election Commis-

sion v. Tyner-Hall Election Campaign Comm., et. al., No. 52157 (S.D.N.Y. Sept. 23, 1981) (FEC blocked from compelling lists of contributions to Communist party on First Amendment associational grounds). *Cf. National Right to Work Comm. v. Federal Election Commission*, No. 80-1487 (D.C. Cir. Sept. 4, 1981) (FEC interest in eliminating corruption in federal campaigns does not overcome First Amendment associational rights).

The Fourth Circuit understood that *Buckley* requires "exacting scrutiny" of the Secretary's interest in investigating SPFF and the deterrent effect on associational rights of the likely disclosure of the results of the Secretary's investigation (a specific finding of fact of the District Court) (13d); but then the Court of Appeals arbitrarily decided to grant protection to some members and contributors of SPFF and not to others. In addition, the Court of Appeals failed to consider petitioner's contention that the Secretary must choose the *least restrictive* approach that would serve the governmental interest. *United States v. O'Brien*, 391 U.S. 367, 377 (1968). Further, this departure from controlling decisions of this Court represents a substantial departure from recent cases in other circuits.

In a very similar case, *Familias Undias v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), the United States Court of Appeals for the Fifth Circuit found a Texas statute violated the First Amendment when it specifically required the disclosure of membership lists of an association that sought to air grievances and seek reform of a local school system. In the case at bar, unlike the Texas statute in *Familias Unidas*, the federal statute at issue does not *expressly* authorize the Secretary to seek membership and contributor lists from organizations like SPFF. In *Familias Unidas*, the record

reflected instances of reprisals and threats of reprisals to members and suspected members, 619 F.2d at 395, as in the case at bar. *See* District Court decision at (6d).

Although the Fifth Circuit in *Familias Undias* found that the State ot Texas had a legitimate and compelling interest in preserving the "peaceful, undisrupted functioning of its schools," it held that the statute swept too broadly and failed to address the impact on individual members. 619 F.2d at 399-401. Citing several relevant Supreme Court cases, the Fifth Circuit held that disclosure of the type of information sought by the government can be compelled, if at all, *only* from "organizations either having a demonstrated track record of illicit conduct or explicitly embracing, as doctrine, plainly unlawful means and ends." *Familias Undias*, 619 F.2d at 401. Certainly, Stevens People and Friends for Freedom does not fall into this narrow category.

Furthermore, the Fifth Circuit held that only in cases dealing with statutes which *expressly* require disclosure as part of a strategy designed to deter future illegal acts of organizations openly avowing illicit goals or having a history of repeated illegal or violent conduct, has the Supreme Court permitted governmental attempts to compel the disclosure of membership rosters of these groups. *See, e.g., Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961); *People of State of New York ex. rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928); *Familias Undias* 619 F.2d at 401. By way of contrast, the Labor-Management Reporting and Disclosure Act does not *expressly* require disclosure of the type of information the Secretary seeks. Therefore, the governmental interest is considerably *weaker* than that found *insufficient* in the cases where compulsory disclosure was *not* allowed.

Indeed, the basic purpose of the Labor-Management Reporting and Disclosure Act is to protect and encourage the very type of activity that petitioners have engaged in.

> The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection . . .

*Labor-Management Reporting and Disclosure Act of 1959*, §2, 29 U.S.C. §401 (1976).

Certainly, loyal Americans like Mildred Ramsey and the other members of SPFF should not receive *less* First Amendment protection than those groups given protection in the cases cited, especially since the statute under which the Secretary purports to proceed is intended to protect and encourage worker discussion of their terms and conditions of employment.

The decision of the Fourth Circuit in the instant case gives the Secretary almost unlimited power to investigate and thereby discourage organizations otherwise protected *merely because* their advocacy activities relate to a labor dispute. The American Civil Liberties Union, the Communist Workers Party, the American Jewish Congress, the United Presbyterian Church, and the United Methodist Church all have participated in the ongoing public debate about whether employees of J.P. Stevens Company should be represented by a union (J.A. at 48). If the Secretary can compel the disclosure of membership lists of SPFF, how can these other organizations expect that their members and contributors will be provided protection?

Like the Fifth Circuit, the D.C. Circuit has recently afforded substantial protection to the membership and contributor lists of a small political organization that demon-

strated disclosure of its lists could lead to harassment of members and contributors. *Black Panther Party v. Smith*, No. 80-1302 (D.C. Cir. July 8, 1981). That case arose out of a civil suit by the Black Panther Party against the United States, alleging a conspiracy to destroy the Party through unlawful enforcement activities, etc. As defendant in the suit, the government sought to invoke Rule 26 of the Federal Rules of Civil Procedure to obtain a list of members of the Party and other allegedly-privileged information. After the Party and other plaintiffs refused to comply with discovery requests, the District Court dismissed the suit. The Court of Appeals reversed and remanded, holding that the voluntary initiation of litigation does not strip a group of its constitutional rights and privileges. The D.C. Circuit held that if "there is some probability that disclosure will lead to reprisal or harrassment," then disclosure cannot be compelled. *Black Panther*, slip op. at 49. The Court further held that because of the preferred position of the First Amendment, "[i]nfringement of First Amendment activities must be kept to a minimum." *Black Panther*, slip op. at 51.

The plaintiffs in *Black Panther* were excused from the requirement that they disclose membership lists even though they had voluntarily initiated litigation against the government. Certainly, Mrs. Ramsey and the other SPFF members, who are not suing anyone, should not be given *less* protection.

Similarly, the Court of Appeals for the Eighth Circuit has recently given substantial protection to the membership lists of a church in a case involving the tax-deductible status of the "church" and the taxpayer who was its prime supporter, and who may have been using the church as a device for the evasion of taxes. *Baldwin v. Commissioner*, No. 80-2008 (8th Cir. May 12, 1981). Although the government certainly has an interest in preventing the evasion of taxes, the Eighth

Circuit held that the Tax Court could not compel the production of membership lists by threatening to dismiss the taxpayer's deficiency redetermination lawsuit. Certainly Mrs. Ramsey and the other SPFF members, who do not claim tax-deductible status for their organization and who are not suing any one, should not receive *less* protection.

## III. THE DISTINCTION MADE BY THE COURT OF APPEALS BETWEEN EMPLOYEES OF J.P. STEVENS COMPANY AND ALL OTHER PERSONS IS INCONSISTENT WITH THE NATIONAL LABOR RELATIONS ACT AND THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

### A. The Term "Employee" Under The National Labor Relations Act Should Be Broadly Construed; Therefore, The Distinction Made By The Court of Appeals Is Inconsistent With That Act

The Fourth Circuit has arbitrarily decided to redefine the definition of "employee" under §2(3) of the National Labor Relations Act, 29 U.S.C. §152(3) (2a). That provision provides:

> "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer. . .

In its decision, the Court of Appeals determined that §603(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §523(b) (8a), "contains a significant limitation on the Secretary's powers with respect to non-supervisory employees of an industry. This section

provided that the Act shall not be construed 'to impair or otherwise affect the rights of any person under the National Labor Relations Act,'" (14d). The Court of Appeals then decided that the only persons entitled to protection from the Secretary's investigations are the employees of the particular company under investigation. Consequently, if this Court does not grant *certiorari,* SPFF members and contributors who do not work for J. P. Stevens Company will lose the protection to which they are entitled under the National Labor Relations Act, the Labor-Management Reporting and Disclosure Act, and the First Amendment.

As this Court repeated just recently, "[o]ur decisions establish with unmistakable clarity that the freedom of an individual to associate for the purpose of advancing beliefs and ideas is protected by the First and Fourteenth Amendments." *Abood v. Detroit Board of Education,* 431 U.S. 209, 233 (1977). The Court of Appeals arbitrarily chose to disregard this Court's concern in this area by limiting constitutional protection *only* to non-supervisory employees of J. P. Stevens Company.

The distinction the Court of Appeals seems to make between members of SPFF who are non-supervisory employees of J. P. Stevens Company and other SPFF members and contributors is arbitrary and capricious. Neither party to the instant proceeding even suggested the distinction, but with it, the Secretary will easily be able to identify the "protected" class of SPFF members. Through subpoenas and depositions he will identify them all by the process of elimination. Once their identities are revealed, their rights are lost, and reprisal against them forthcoming.

This misconception of the meaning and purpose of National Labor Relations Act §7, (3a) rights and the First

Amendment is pervasive. The definition of "employee" under §2(3) of the National Labor Relations Act (2a) does not limit the use of the term to "employees of a particular employer." This Court has long recognized that: "[t]his was not fortuitous phrasing. It had reference to the controversies engendered by constructions placed upon the Clayton Act and kindred state legislation in relation to the functions of workers' organizations and the desire not to repeat those controversies." *Phelps Dodge Corp. v. NLRB,* 313 U.S. 177, 192 (1941). The *Phelps Dodge* principle has been reaffirmed by the Court: "[t]his definition [§2(3) of the National Labor Relations Act] was intended to protect employees when they engage in otherwise proper concerted activities in support of employees of employers *other than their own.*" *Eastex, Inc. v. NLRB,* 437 U.S. 556, 564 (1978) (emphasis supplied).

Furthermore, the legislative history of the National Labor Relations Act buttresses the argument that the term "employee" was to be given a broad construction when read together with Section 7 of the Act. *S. Rep. No.* 573, 74th Cong., 1st Sess. 6 (1935); *H. R. Rep. No.* 1147, 74th Cong., 1st Sess. 9-10 (1935).

Section 7 of the National Labor Relations Act, 29 U.S.C. §157, (3a), specifically provides employees "the right to self-organization . . . and to engage in other concerted activities . . . or other mutual aid or protection." The Norris-LaGuardia Act, from which Section 7 was derived, declares that the public policy of the United States is for a worker to "have *full freedom of association,* self-organization, and designation of representatives of his own choosing." 29 U.S.C. §102 (emphasis supplied). *See also NLRB v. Magnavox Co.,* 415 U.S. 322 (1974); *NLRB v. Peter Cailler Kohler Swiss Chocolates Co.,* 130 F.2d 503 (2d Cir. 1942).

Thus, the history of Section 7 demonstrates that the very purpose of including the "other mutual aid or protection" clause in the National Labor Relations Act was to provide protection for concerted activities relating to the interests and status of employees going beyond seeking a specific objective from the immediate employer. *Cf. Kelley v. Southern Pacific Co.*, 419 U.S. 318, 322 (1974) ("employee" given broad meaning under Federal Employers Liability Act). Similarly, protection for disclosure must extend to employees outside the Stevens mills who aid in supporting the efforts of these courageous workers who oppose unionization, despite death threats and other harassment.

### B. Under the Labor-Management Reporting and Disclosure Act Employees Have The Right to Associate With Non-Employees and the Distinction Made By the Court of Appeals Is Inconsistent With That Right

By making an irrational distinction between employees of J.P. Stevens Company and non-employees, the Court of Appeals violated not only the First Amendment and the National Labor Relations Act, but it violated the Labor-Management Reporting and Disclosure Act as well. The Court of Appeals for the District of Columbia Circuit recently struck down an internal union rule forbidding candidates for union office from accepting financial contributions from non-members of the union. *Sadlowski v. United Steelworkers of America*, 645 F.2d 1114 (D.C. Cir. 1981), *cert. granted*, 50 U.S.L.W. 3333 (Nov. 2, 1981).

The Court of Appeals in *Sadlowski* concluded that the Steelworkers Union rule prohibiting candidates for high

union office from accepting contributions from nonmembers violated the "free speech and assembly" provision of the "bill of rights" in the Labor-Management Reporting and Disclosure Act, §101(a)(2) of the Act; 29 U.S.C. §411(a)(2), (5a). If it is unlawful for a *union*, even without state action, to adopt a rule or practice which impinges upon the rights of union members to associate with nonmembers in the exercise of their Labor-Management Reporting and Disclosure Act rights in the context of an intra-union election of union officers, petitioners contend that it is all the more unlawful for the Secretary of Labor to adopt a rule or practice which impinges upon the rights of employees in a bargaining unit to associate with non-employees in determining their bargaining representative, or to decide whether or not to have a bargaining representative, in the context of a union-representation campaign.

In *Ostrowski v. Utility Workers Local 1-2,* 104 L.R.R.M. 2343 (S.D.N.Y. 1980), the District Court cited the Labor-Management Reporting and Disclosure Act in striking down union discipline of a union shop steward who had been found guilty (by a union trial board) of harming the interests of the union by associating with the SHAD Alliance, an anti-nuclear group of nonmembers of the union. As in *Sadlowski,* it was held that the right of association under the Labor-Management Reporting and Disclosure Act should not be limited to members of the union or employees in the bargaining unit.

The United States District Court for the Eastern District of Pennsylvania has similarly held that the "speech and assembly" clause in the Labor-Management Reporting and Disclosure Act's "bill of rights" should not be narrowly construed to protect only speech addressed to or assembly with other members of the union or other employees in the

bargaining unit. *Graham v. Soloner,* 220 F.Supp. 711, 714 (E.D. Pa. 1963).

Similarly, the legislative history of the Labor-Management Reporting and Disclosure Act shows that the application of the "free speech and assembly" clause of the Labor-Management Reporting and Disclosure Act's "bill of rights" was not intended to apply only to speech to or assembly with other union members or other employees in a bargaining unit. In a floor debate on the Act, Senator McClellan explained that the provision was intended to recognize the right of union members

> "... to assemble in groups if they like, and to *visit their neighbors* and to discuss union affairs, and to say what they think, or perhaps discuss what should be done to straighten out union affairs..."

105 *Cong. Rec.* 6477 (1959) (remarks of Senator McClellan) (emphasis supplied).

In trying to enforce the Labor-Management Reporting and Disclosure Act the Secretary and the Court of Appeals have violated an important provision of the "bill of rights" of that Act, thus conflicting with the legislative history of the Act and the holdings of at least three courts which have construed the Act.

## CONCLUSION

Because this case involves important constitutional and statutory-construction questions that are almost certain to recur, and because the decision of the Court of Appeals conflicts with decisions of this Court and other courts of appeal, petitioners respectfully request that a writ of

certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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November 16, 1981

# APPENDIX A

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

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No.

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E. C. MILDRED RAMSEY AND STEVENS PEOPLE AND FRIENDS FOR FREEDOM,

*Petitioners,*

v.

RAYMOND J. DONOVAN, SECRETARY, DEPARTMENT OF LABOR,

*Respondent.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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*Attorneys for Petitioners*
**Counsel of Record*

## 29 U.S.C. §102. Public policy in labor matters declared

In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

## 29 U.S.C. §152. Definitions

When used in this subchapter—

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a

consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act,[1] as amended from time to time, or by any other person who is not an employer as herein defined.

**29 U.S.C. §157. Right of Employees as to organization, collective bargaining etc.:**

Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

**29 U.S.C. §401. Congressional declaration of findings, purposes, and policy**

(a) The Congress finds that, in the public interest, it continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage

in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

(c) The Congress, therefore, further finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947, as amended,[1] and the Railway Labor Act, as amended,[2] and have the tendency or necessary effect of burdening or obstructing commerce by (1) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (2) occurring in the current of commerce; (3) materially affecting, restraining, or controlling the flow of raw materials

or manufactured or processed goods into or from the channels of commerce, or the prices of such materials or goods in commerce; or (4) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing into or from the channels of commerce.

**29 U.S.C. §411. Bill of rights; constitution and bylaws of labor organizations**

(2) **Freedom of speech and assembly.**—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided,* That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

**29 U.S.C. §433. Report of employers**

(a) Every employer who in any fiscal year made—

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of

exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the

purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

### 29 U.S.C. §435. Reports and documents as public information

(a) The contents of the reports and documents filed with the Secretary pursuant to sections 431, 432, 433, and 441 of this title shall be public information, and the Secretary may publish any information and data which he obtains pursuant to the provisions of this subchapter. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) The Secretary shall by regulation make reasonable provision for the inspection and examination, on the request of any person, of the information and data contained in any report or other document filed with him pursuant to section 431, 432, 433, or 441 of this title.

### 29 U.S.C. §440. Civil action for enforcement by Secretary; jurisdiction

Whenever it shall appear that any person has violated or is about to violate any of the provisions of this subchapter, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. Any such action may be brought in the district court of the United States where the violation occurred or, at the option of the parties, in the United States District Court for the District of Columbia.

**29 U.S.C. §521. Investigation by Secretary; applicability of other laws:**

(a) The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

(b) For the purpose of any investigation provided for in this chapter, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents), are made applicable to the jurisdiction, powers, and duties of the Secretary or any officers designated by him.

**29 U.S.C. §523. Retention of rights under other Federal and State laws:**

(a) Except as explicitly provided to the contrary, nothing in this chapter shall reduce or limit the responsibilities of any labor organization or any officer, agent, shop steward, or other representative of a labor organization, or of any trust in which a labor organization is interested, under any other Federal law or under the laws of any State, and, except as explicitly provided to the contrary, nothing in this chapter shall take away any right or bar any remedy to which

members of a labor organization are entitled under such other Federal law or law of any State.

(b) Nothing contained in this chapter and section 186(a-c) of this title shall be construed to supersede or impair or otherwise affect the provisions of the Railway Labor Act, as amended, or any of the obligations, rights, benefits, privileges, or immunities of any carrier, employee, organization, representative, or person subject thereto; nor shall anything contained in this chapter be construed to confer any rights, privileges, immunities or defenses upon employers, or to impair or otherwise affect the rights of any person under the National Labor Relations Act, as amended.

## FEDERAL TRADE COMMISSION ACT

**15 U.S.C. §49. Documentary evidence; depositions; witnesses:**

For the purposes of sections 41 to 46 and 47 to 58 of this title the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

## APPENDIX B

The Court: This is a proceeding in which the Secretary of Labor seeks to enforce two administrative subpoenas pursuant to an order to show cause which was entered by this court.

The hearing came on before the court today, May 2, 1980.

The subpoenas are as follows:

First, there is a subpoena issued by the Secretary bearing the date 7 November 1979, issued to Stevens People & Friends for Freedom, Post Office Box 7436, Greenville, South Carolina, 29610, and directs the Stevens People & Friends for Freedom to appear before Resident Investigator Hal Swain and/or Investigator Terrill Dixon of the Labor-Management Services Administration, at the United States Attorney's Office, in Greenville, on November 19, 1979, at 9:00 o'clock, a.m., in reference to an investigation by the Secretary involving a determination whether any person has violated or is about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 United States Code, Section 401, et seq., and to bring with the organization to which the subpoena is directed any and all records of the Stevens People & Friends for Freedom, and the Southern Employees Education Fund, for the period January 1, 1976 to the present date, specifically, but not limited to: 1. lists of contributors, their addresses, dates and amounts contributed; 2. records of receipts and disbursements; 3. bank statements, and cancelled checks; 4. all correspondence records; 5. minutes of meetings; 6. any agreements, requests or contracts to represent or assist the . agreements, requests or contracts to represent or assist the J. P. Stevens Company, the J. P. Stevens Employees Education Committee, or the North Carolina Fund for Individual Rights.

That first subpoena, which I have just mentioned, is delineated "subpena duces tecum" and, as I have indicataed, bears the date November 7, 1979, and is signed by Carl Rolnick.

The second subpoena is delineated a "subpena ad testificandum". It bears the date November 7, 1979, and is also signed by Carl Rolnick. That subpoena is directed to E. C. (Mildred) Ramsey, 50 Hutchens Street, Greenville, South Carolina, and directs Ms. Ramsey to appear before the Resident Investigator Hal Swain and/or Investigator Terrill Dixon, of the Labor-Management Services Administration, Department of Labor, at the United States Attorney's Office, in Greenville, South Carolina, on December 3, 1979, at 9:00 o'clock, a.m., to testify in the matter of an investigation of the office involving a determination whether J. P. Stevens and Company, Incorporated, and any of its agents have violated or are about to violate any provision of the Labor-Management Reporting and Disclosure Act of 1959, 29 United States Code, Section 401, et seq., including, without limitation, the following: J. P. Stevens Employees Education Committee; the North Carolina Fund for Individual Rights; the North Carolina Conservative Union; Southern Employees Education Fund and Stevens People and Friends for Freedom.

At the hearing, Counsel for the Secretary stated that it is the purpose of the investigation pursuant to which the subpoenas were issued to ascertain whether the respondents, Stevens People and Friends for Freedom and E. C. (Mildred) Ramsey, are involved in activity delineated by 29 United States Code, Section 433, in the persuader activities set forth in subsection "B" (1) and (2) of 29 United States Code, Section 433, and whether the respondents and the employer, J. P. Stevens Company, have an arrangement pursuant to

which the respondents are taking activity designed to persuade employees to exercise or not to exercise or persuade employees as to the manner of exercising the right to organize and bargain collectively through representatives of their own choosing, or to supply an employer with information concerning the activities of employees, or a Labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

The Congress of the United States has made a congressional determination that the public interest requires the Congress and requires the Government to monitor the extent to which employers contribute to labor activity. That congressional finding and statement of congressional purpose is set forth in 29 United States Code, Section 401, and demonstrates the commitment of the Congress of the United States to carefully monitor labor-management relations, all in the interest of prohibiting activity that might have the effect of burdening or obstructing commerce by impairing the efficiency, safety or operation of the instrumentalities of commerce and in other respects set forth in the statute, Section 401 of Title 29, United States Code.

The respondents in this cause move to quash the subpoenas upon various considerations founded in the First Amendment to the Constitution of the United States. The respondents assert that they have the right of the First Amendment to associate with each other around their common purpose and to obtain and secure the comfort that naturally inures to each other on account of their association and to advocate the cause that they perceive to be in their best interests.

The respondents argue that the subpoena duces tecum in this case and the subpoena ad testificandum constitute an

intrusion into their constitutionally protected right to freely associate with each other.

This matter has been considered fully at the hearing here today. The court recognizes the public policy that prompted the Congress to enact the statute requiring the filing of reports and requiring both employers and organizations and persons engaged in activities pursuant to arrangements with employers.

The court also notes that in this proceeding the secretary does not seek to require implementation of the reporting requirements of 29 United States Code, Section 433. Were that the case, this court would be constrained, pursuant to the recent pronouncement of the Court of Appeals for the Fourth Circuit in Master Printers of America versus Ray Marshall, Secretary of Labor, the opinion in case numbered 79-1513, to lend the assistance of the court in obtaining compliance with the reporting requirements of Title 29, United States Code, Section 433.

Instead, the secretary has issued broadly worded subpoenas to the organization, the unincorporated association, known as Stevens People and Friends for Freedom, and to the individual, Mrs. E. C. (Mildred) Ramsey, directing them to produce the broad-based information set forth in the two subpoenas.

The subpoenas, so worded, seek information which could conceivably have a chilling effect upon the rights of the individuals who have come together as an unincorporated association named Stevens People and Friends for Freedom to freely associate among themselves and to dispense with information among themselves and to advocate the cause around which they have formed their association. The subpoena duces tecum, for example, seeks to require the organization to list its contributors, their addresses, to

supply records of all receipts and disbursements, bank statements, cancelled checks, correspondence records, minutes of their meetings, together with any agreements, requests or contracts to represent or assist the J. P. Stevens Company and the other groups listed in the subpoena duces tecum.

The information which the subpoena duces tecum seeks to require the respondents to submit to the secretary is, of course, somewhat broader than the information which the same respondents would be required to submit in the report required to be filed by 29 United States Code, Section 433(B).

Incidentally, I have not been informed here whether the respondents have complied with the reporting requirements of the statute. But, I repeat, this is not a proceeding to enforce the reporting requirements. This, the court has been informed, is a proceeding to seek to enforce the right of the secretary to investigate whether a violation of the statutes has occurred.

The court determines that while the secretary certainly may investigate, as is required under the statute, that there is a requirement on the part of the employees or any organization of employees, as well as the employer, to file reports and to state whether there has been an arrangement between employer and employees or organizations of employees in violation of Title 29, United States Code, Section 433.

There certainly are available to the government those sanctions that the law normally place upon those who file deliberately falsified reports to the Government. But to permit the secretary to seek out from an association of citizens who have come together to seek the comfort of each other and to associate for purposes best known to them and to seek their membership lists, their lists of contributors, the

minutes of their meetings, would constitute in the views of this court a chilling effect on the rights of these citizens to associate and to speak with each other, all of which are protected by the First Amendment to the Constitution of the United States.

By the same token, the subpoena ad testificandum issued to Ms. Ramsey seeks to have Ms. Ramsey reveal also the information that the association has a justifiable right to take refuge under the First Amendment.

Accordingly, it is the judgment of this court that the motions to quash the subpoena duces tecum and the subpoena ad testificandum be, and the same are, hereby granted.

Now, nothing that has been stated by the court should be construed to suggest that the parties, neither the employer nor the association of employees, are exempt from the reporting requirements of 29 United States Code, Section 433. Clearly, the secretary has, under the statute, refuge to a United States District Court to enforce the provisions of the statute. The only thing the court has determined in this proceeding is that citizens of the United States have the right under the First Amendment to the Constitution to freely associate among themselves and that the Government may not, under the guise of enforcement of this statute, invade the minutes of the meetings of the organization and require the officers and members of the association to reveal their financial records to the secretary outside the initial requirement that the statute imposes in its requirement that not only the employer but the employees and organizations of employees file reports concerning whether they are engaged in persuader activities and concerning whether there is or has been some arrangement pursuant to which persuader activities delineated in the statute are taking place

and, also, whether the employer has or is contributing financially to those persuader activities.

Thank you.

The court will be adjourned.

(Thereupon, at 11:45 a.m., the above-entitled matter was concluded.)

## APPENDIX C

IN THE

## UNITED STATES DISTRICT COURT
## FOR THE DISTRICT OF SOUTH CAROLINA
## GREENVILLE DIVISION

| | | |
|---|---|---|
| RAY MARSHALL, Secretary of Labor, United States Department of Labor, Petitioner, | ) | MINUTE ORDER |
| vs | ) | M80-2-42 |
| STEVENS PEOPLE AND FRIENDS FOR FREEDOM, AND E.C. (MILDRED) RAMSEY, Respondents. | ) | |

This matter having come before the Court on a Petition to Enforce Administrative Subpoenas and Respondents Motion to Strike and the Court having heard and considered the Motion, it is,

AT THE DIRECTION OF THE COURT ordered that the Motion to Strike the Petition is granted and this action is hereby dismissed.

MILLER C. FOSTER, JR.,
CLERK

Columbia, South Carolina
May 5, 1980

**APPENDIX D**

IN THE

**UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

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**No. 80-1490**

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Ray Marshall, Secretary of
Labor, United States Depart-
ment of Labor,

*Appellant,*

v.

Stevens People and Friends
for Freedom and E.C.
(Mildred) Ramsey,

*Appelees.*

Amalgamated Clothing and
Textile Workers Union,
AFL-CIO, CLC,

*Amicus Curiae.*

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Appeal from the United States District Court
for the District of South Carolina, at Greenville

Matthew J. Perry, Judge.

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**No. 80-1715**

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Ray Marshall, Secretary of Labor, United States Department of Labor,

*Appellant,*

v.

John G. Hutchens,

*Appellee.*

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**No. 80-1716**

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Ray Marshall, Secretary of Labor, United States Department of Labor,

*Appellant,*

v.

J.P. Stevens Employees Education Committee, Eugene Ray Patterson, Wilson Lambert, Robert A. Valois, and Robert T. Click,

*Appellees.*

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Appeals from the United States District Court
for the Eastern District of North Carolina, at Wilson

Franklin T. Dupree, Jr., Chief Judge

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Argued March 2, 1981 Decided August 4, 1981

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Before: BUTZNER, PHILLIPS, and MURNAGHAN, Circuit Judges

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Marleigh Dover Lang, Attorney, Civil Division, U.S. Department of Justice (Alice Daniel, Assistant Attorney General, Thomas E. Lydon and James A. Blackburn, United States Attorneys, William Kanter, Attorney, Civil Division, U.S. Department of Justice, on brief) for appellant; Michael Ernest Avakian (Baker Armstrong Smith, Albert Q. Taylor, Jr., Leatherwood, Walker, Todd and Mann on brief) for appellees in 80-1490; John V. Hunter, III (Hunter, Wharton & Howell on brief) for appellees in 80-1715 and 80-1716; (Jonathan R. Harkavy, Smith, Patterson, Follin, Curtis, James and Harkavy, Arthur M. Goldberg, General Counsel, Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, Amicus Curiae).

BUTZNER, Circuit Judge:

In these consolidated cases, the Secretary of Labor seeks to enforce subpoenas issued to several individuals and two

committees of employees of the J.P. Stevens Co., Inc., which were formed to oppose unionization of Stevens' textile mills. The Secretary issued the subpoenas as part of an investigation concerning possible violations of §203 of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §433. This section, among other things, requires disclosure of information about activities undertaken to persuade employees with respect to the exercise of their collective bargaining rights.

The district courts quashed the subpoenas in their entirety on the ground that enforcement would have a chilling effect on the first amendment rights of the committees, their members, and contributors. We believe that disclosure of information identifying Stevens' non-supervisory employees is unwarranted. We conclude, however, that the district courts should have enforced the subpoenas with respect to the other information the Secretary sought.

## I

Appellees in 80-1490 are Stevens People and Friends for Freedom and one of its officers. The Secretary issued a subpoena to the committee requesting lists of contributors, records of receipts and disbursements, bank statements, cancelled checks, correspondence records, minutes of meetings, and any agreements to assist Stevens, the Stevens Employees Education Committee, or the North Carolina Fund for Individual Rights. The subpoena served on the officer required her to testify concerning possible violations of the LMRDA.

Upon the Secretary's petition for enforcement, pursuant to 29 U.S.C. §521, the district court quashed the administrative subpoenas in their entirety because they would have

a chilling effect on appellees' first amendment rights. While acknowledging that the Secretary is required to investigate violations of the Act, the court held that the Secretary could not obtain any information from the committee or its officer until he filed a suit to require a report of persuader activities as provided by the Act. At that time, the court noted, the government could rely on "those sanctions that the law normally places upon those who file deliberately falsified reports to the government."

## II

Appeals 80-1715 and 80-1716 were consolidated in the District Court for the Eastern District of North Carolina.[1] Appellees are the J.P. Stevens Employees Education Committee,[2] an anti-union association of employees at a Stevens mill, several persons associated with the committee, and a solicitor of funds for the committee.

The Secretary issued subpoenas to the committee and the individuals requesting information similar to that requested from Stevens People and its officers. After the appellees refused to respond, the Secretary filed suit seeking enforcement of the subpoenas.

The district court rejected the appellees' statutory contention that since they have no disclosure duties under the LMRDA, they cannot be investigated by the Secretary. It ruled that "[e]ven if the respondents had no duty to disclose,

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[1]The opinion of the district court is reported as Marshall v. J.P. Stevens Employees Educ. Comm., 495 F. Supp. 553 (E.D.N.C. 1980).

[2]The historical background of the committee's formation and its purposes are described in J.P. Stevens Employees Educ. Comm. v. NLRB, 582 F.2d 326, 328 (4th Cir. 1978).

the Secretary still may subpoena and investigate them under his broad powers to ferret out relevant information wherever it may be found." Further, the court held that the Secretary's investigative powers are so broad "that he need not first establish that a contribution or agreement [between the committee and Stevens] in fact eists before he investigates it." 495 F. Supp. at 558.

The court next addressed the appellees' claim that enforcement of the subpoenas would infringe their first amendment rights. If found that the appellees "have shown a 'reasonable probability' that economic and physical reprisals will occur upon disclosure of membership and contributors list to the Secretary." 495 F. Supp. at 561.[3] It also ruled that "[t]he information sought by the Secretary is strictly tailored to the purpose of determining whether violations of the LMRDA have occurred." 495 F. Supp. at 562.

The court then balanced the appellees' "freedom to come together in privacy for the purpose of developing their ideas and to receive confidential contributions" against "[t]he government interest in fairness and above-board dealings during a labor ocnflict." 495 F. Supp. at 564. It held that "[t]he rough equivalence in weight of the competing interests when balanced against each other leads the court to conclude that the [appellees'] First Amendment interests must prevail." 495 F. Supp. at 565. Consequently, the court granted the motion to quash the subpoenas in their entirety.

## III

At the outset, we address the appellees' contention that even if the subpoenas were properly issued, their enforce-

[3]The Secretary subpoenaed the committees' lists of contributors but not their membership lists. The Supreme Court, however, has "not drawn

ment is now a moot issue. The Secretary recently informed the J.P. Stevens Employees Education Committee that it is required to file a report under the LMRDA. This request for a report, the committee contends, is an admission that no further investigation is required. Further, the committee maintains that this case is moot because the Secretary has already obtained information from its bank account that discloses the identity of some committee contributors.

We cannot agree that these developments render the enforcement issue moot. While the bank records have provided the Secretary with some of the information requested in the subpoenas, he continues to seek information about contributions not disclosed by these records. The Secretary's determination, based on the bank records, that the committee is required to disclose its persuader activities does not end his investigation of possible violations of the Act by Stevens or other persons who also may be required to file reports.

Closely related to the appellees' contention that enforcement has been mooted is their assertion that enforcement of the subpoenas is unnecessary. The Secretary acknowledged in his brief that Stevens should be able to provide copies of its agreements, if any, with the committees. Therefore, the appellees contend that enforcement should be denied because the Secretary has other sources for the information he seeks. In support of their position, they rely on International Union, UAW v. National Right to Work Legal Defense and Education Foundation, Inc., 590 F.2d 1139 (D.C. Cir. 1978).

In *International Union, UAW*, the court vacated discovery sanctions imposed under Rule 37 of the Federal

*(footnote continued from preceding page)*

fine lines between contributors and members but [has] treated them interchangeably." Buckley v. Valeo, 424 U.S. 1, 66 (1976).

Rules of Civil Procedure and remanded the case for determination of whether the union, which was seeking the names of contributors to the foundation, had other reasonable sources of information. The court did not decide whether the information ultimately would be subject to discovery. 590 F.2d at 1152-53 and n.19. Also, the court held that there was no private right of action under §203 of the LMRDA, noting that Congress had conferred exclusive enforcement authority on the Secretary of Labor. Here, in contrast, we are not reviewing the scope of the Rules' discovery provisions or the right of a private litigant to enforce §203. The Secretary's investigatory powers are conferred by §601 of the Act, 29 U.S.C. §521, and are not circumscribed by the Civil Rules. Moreover, unlike a union, the Secretary is authorized to institute necessary suits to enforce the Act. Therefore, *International Union, UAW*, is not persuasive precedent.

We conclude that because the information sought by the Secretary is relevant to his continuing investigation, the issue of enforcement is neither moot nor necessary.

## IV

Before considering the appellees' constitutional challenge to the subpoenas, we must first address their statutory challenge. *See* Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 347 (1936) (Brandeis, J.). The appellees claim that associations of employees cannot be required under §203(b) of the Act to disclose their persuader activities and that therefore they have no duty to disclose the subpoenaed information.

Section 203(b), 29 U.S.C. §43(b), requires, in part:

Every person who pursuant to any agreement or arrange-

ment with an employer undertakes activities . . .

> (1) to persuade employees to exercise . . .the right to organize and bargain collectively through representatives of their own choosing; or
>
> (2) to supply an employer with information concerning the activities of employees . . .in connection with a labor dispute.

shall file . . . a report with the Secretary . . . .'"

Section 203(a), 29 U.S.C. §433(a), requires a similar report from an employer who, among other things, enters agreements or pays money "to any of his employees, or any group or committee of such employees" for persuader activities.

Person is defined in 29 U.S.C. §402(d) to include "one or more individuals, labor organizations, partnerships, associations, corporations . . . [and] unincorporated organizations . . . ." Despite this broad definition of "person," appellees contend that §203(b) is not applicable to them. They maintain that the legislative history shows that Congress intended through this disclosure provision to prevent improper practices by labor organizations, employers, and labor relations consultants and not to regulate or monitor the activities of employee associations. *See* Senate Committee on Labor and Public Welfare, S. Rep. No. 86-187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. Code Cong. & Admin. News 2318, 2327. Further, they note that in 1979 the Committee on Education and Labor of the House of Representatives failed to approve a bill which would have expressly given the Secretary power to require reports from certain employee associations. H.R. 788, 96th Cong., 1st Sess. (1979). It would be unnecessary, they

contend, to amend the Act to apply to an "association of employees of an employer" if the statute already required disclosure of persuader activities by these groups.

The Secretary contends that the committees are persons as defined in 29 U.S.C. §402(d) and may be required to report their persuader activities. But quite apart form this, he states that he is conducting an investigation to determine if Stevens, any of its agents, or any other persons have violated or are about to violate any provision of the LMRDA. He maintains that even if appellees are not required to report, he id not exceed his broad investigatory powers under §601 of the Act in issuing the subpoenas.[4]

These are not appropriate cases for deciding whether an employees' committee may be required to file the reports specified in the Act. For the purpose of these appeals, it is sufficient to observe that the appellees' argument confuses the duty to report with the Secretary's authority to investigate possible violations of the Act. Section 601 authorizes the Secretary to conduct an investigation whenever "he believes it necessary in order to determine whether any person has violated or is about to violate" the reporting and disclosure provisions of the Act, 15 U.S.C. §49, which empowers the Secretary to require by subpoena testimony and documentary evidence relating to any matter under investigation.

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[4]Section 601 of the Act, 29 U.S.C. §521, provides in part:

> The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this chapter (except subchapter II of this chapter) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may resort to interested persons or officials concerning the facts required to be shown in any report required by this chapter and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such investigation.

Congress granted the Secretary broad powers of investigation in order to facilitate enforcement of the Act without resort to unnecessary litigation. Consequently, the Secretary may initiate an investigation without probable cause to believe that the Act has been violated. *See* United States v. Budzanoski, 462 F.2d 443, 451 (3d Cir. 1972); International Brotherhood of Teamsters v. Wirtz, 346, F.2d 827, 830-31 (D.C. Cir. 1965); Goldberg v. Truck Drivers Local Union No. 299, 293 F.2d 897, 811-12 (6th Cir. 1961). He is not required to first determine that appellees have violated a duty to disclose nor must he rely exclusively on the sanctions provided for non-disclosure in 29 U.S.C. §439. The Secretary's administrative powers of investigation have been likened to a grand jury, which unlike a court, "does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." United States v. Morton Salt Co., 338 U.S. 632, 642-43 (1950).

The Secretary's subpoena power is not restricted to the individual or organizations being investigated. *See* Local 57, International Union of Operating Engineers v. Wirtz, 326 F.2d 467 (1st Cir. 1964). The appellees may be required to produce information relevant to the Secretary's investigation of any suspected violations of the Act. As stated in Goldberg v. Battles, 196 F. Supp. 749, 754 (E.D. Pa. 1961), *aff'd per curiam*, 299 F.2d 937 (3d Cir. 1962):

> Section 601(a) empowers the Secretary to question any person he may deem necessary to enable him to determine the fats relative to the violation. The language of the statute shows that Congress also intended to give the Secretary of Labor the authority to question persons other than those directly charged with duties and responsibilities under the Act. . .

The Supreme Court has stated in a similar context that "it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." United States v. Morton Salt Co., 338 U.S. 632, 652 (1950). The Secretary's subpoenas satisfy these requirements.

We therefore conclude that, except for the limitation on the Secretary's authority which we discuss in Part V, the Secretary acted within his statutory powers in issuing these subpoenas.

## V

The appellees contend that enforcement of the subpoenas would infringe their privacy of association and right of advocacy which are guaranteed by the first amendment. In support of their position, the appellees introduced evidence that satisfied both district courts that disclosure of the identities of their members and contributors would have a chilling effect on their associational rights.

We accept the district court's findings about the chilling effects of disclosure, and with this factual premise established, we will apply the governing principles of law. In NAACP v. Alabama, 357 U.S. 449 (1958), and subsequent cases, the Supreme Court has recognized that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association. *E.g.*, Buckley v. Valeo, 424 U.S. 1 (1976) (campaign contributor lists); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963) (membership lists); Bates v. Little Rock, 361 U.S. 516 (1960) (membership lists and financial contributions).

In Buckley v. Valeo, 424 U.S. 1, 64-6[illegible] (1976), the Court summarized the general principles for ascertaining whether compelled disclosure can be justified:

> We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP* v. *Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. . . .This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure.

The district courts found a deterrent effect on the exercise of the appellees' first amendment rights through the unintended but inevitable results of government disclosure, despite administrative and statutory safeguards to retain the confidentiality of the information. Therefore, scrutiny of the government's interest in the information it seeks is required even though there has been no proof of direct government action to deter the appellees' exercise of their first amendment rights.

Unlike the district courts, we believe that application of the principles stated in *Buckley* requires separate consideration of the different types of information the Secretary seeks.

The subpoenas were issued against a background of labor-management strife over organizational efforts at Stevens' mills. Viewed in this context, it is apparent that the requested information falls roughly into three classes. The first pertains to information that would disclose the names of non-supervisory employees at Stevens' mills; the second consists

of lists of other contributors; and the third includes all other information. With respect to all classes of information, the government's interest is enforcement of §203 of the Labor Management Reporting and Disclosure Act, but the magnitude and nature of its interests differs with respect to the type of information it seeks.

Section 603(b) of the Act, 29 U.S.C. 523(b), contains a significant limitation on the Secretary's powers with respect to non-supervisory employees of an industry. This section provides that the Act shall not be construed "to impair or otherwise affect the rights of any person under the National Labor Relations Act." Among the rights the Labor Relations Act assures non-supervisory employees are the right to refrain from any union organizational activites and the right to engage in concerted activities for their mutual aid. 29 U.S.C §157.

The evidence discloses that the committees were formed by non-supervisory employees to oppose unions at Stevens' mills. Their right of opposition and their right to associate for achievement of their goal is secured by §157 of the Labor Act. Compelled disclosure of their identities, the district courts found, will infringe their rights of association.

We therefore conclude that with respect to Stevens' non-supervisory employees, the Secretary has not satisfied the requirements for compelled disclosure set forth in Buckley v. Valeo, 424 U.S. 1, 64-65 (1976). The very terms of the statute under which he proceeds contain limitations on his powers with respect to non-supervisory employees who are engaged in an organizational campaign. For this reason, the Secretary cannot meet *Buckley*'s requirement that he show a substantial relation between his interest in enforcing the Act and information identifying Stevens' non-supervisory employees who are associated to exercise the rights assured

them by §157. Accordingly, on remand, the district court should limit the scope of the subpoenas to preclude disclosure of the names of Stevens' non-supervisory employees who are associated with the appellees' committees or who contribute to their treasuries. Our exclusion of these employees is consistent with NAACP v. Alabama, 357 U.S. 449 (1958); Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963); and Bates v. Little Rock, 361 U.S. 516 (1960). In these cases, too, the respective inquisitors were unable to show a substantial relation between the governmental interests and the information they sought.

**A**

We turn next to consideration of the second type of information the Secretary seeks. This, as we have mentioned, is information about individuals (other than Stevens' non-supervisory employees) and organizations who have contributed money to the appellees. Broadly speaking, the subpoenas seek information that would disclose the committees' financial contacts, if any, with Stevens, with other organizations, and with individuals who oppose organizational efforts at Stevens' mills. Undoubtedly, as the district courts found, compelled production of this information has the potential for deterring legitimate contributions to the appellees, and to this extent it creates the possibility of infringement of the appellees' first amendment rights of association and advocacy. Nevertheless, the Supreme Court has "acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved." Buckley v. Valeo, 424 U.S. 1, 66 (1976). These

interests include the government's power to inform itself through investigations "in order to act and protect its legitimate and vital interests." Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 544 (1963).

Our analysis of the governmental interests that the Secretary seeks to vindicate begins with the legislative history of the reporting requirements of the Act. The Senate Committee explained the necessity for compelled disclosure in the following excerpt from its report:[5]

> The committee notes that in almost every instance of corruption in the labor-management field there have been direct or indirect management involvements. The report of the McClellan committee describes management middlemen flitting about the country on behalf of employers to defeat attempts at labor organization. In some cases they work directly on employees or thorugh committees to discourage legitimate organizational drives or set up company-dominated unions. These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor practices. The middlemen have acted, in fact if not in law, as agents of management. Nevertheless, an attorney for the National Labor Relations Board has testified before the McClellan committee that the present law is not adequate to deal with such activitites.
>
> The committee believes that employers should be required to report their arrangements with these union-busting middlemen. Further, the Committee on Labor and Public Welfare has received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their

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[5]Senate Committee on Labor and Public Welfare, S. Rep. No. 86-187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. Code Cong. & Admin. News 2318, 2326-2327.

> choice, a right guaranteed by the National Labor Relations Act. Sometimes these expenditures are hidden behind committees or fronts; however the expenditures are made, they are usually surreptitious because of the unethical content of the message itself . . . .
>
> Similarly, expenditures have been made in the past by employers surreptitiously and through labor spires, to obtain information about employees and unions. This type of activity certainly is not conducive to sound and harmonious labor realtions.

The findings of the Senate Committee are reflected in the Act's declaration of findings, purposes, and policy, 29 U.S.C. §401(c):

> The Congress . . .finds and declares that the enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the policies of the Labor Management Relations Act, 1947 . . .

Among the remedial measures enacted by Congress to implement its declaration of policy was §203, which deals with the subject matter of the Secretary's present investigation.

The act's legislative history, congressional declaration, and §203 demonstrate that the Secretary seeks to vindicate important governmental interests. The contributions which the Secretary seeks to investigate perhaps are benign, but they may be of the type that Congress has denounced. Through his investigation the Secretary seeks to determine whether these contributions are from sources that are required to report under §203. In this respect these appeals differ from Bates v. Little Rock, 316 U.S. 516 (1960), where the facts conclusively established that contributors offended no law.

Moreover, these governmental interests, which the Secretary asserts, are substantially related to the information that he seeks. It is this substantial relationship between the legitimate governmental interest in the source and purpose of the contributions paid to appellees and the information the Secretary seeks about these contributions that brings this case within the general principles set forth in Buckley v. Valeo, 424 U.S. 1, 64 (1976), where the Court upheld a statutory requirement for disclosure of the identity of contributors to political campaigns. Also, it is this substantial relationship that distinguishes these appeals from Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539 (1963), Bates v. Little Rock, 316 U.S. 516 (1960), and NAACP v. Alabama, 357 U.S. 449 (1958), where no similar relationship was established.

Accordingly, we conclude that tested by the principles reiterated in *Buckley*, the subpoenas for lists of contributors, other than Stevens' non-supervisory employees, are constitutionally valid.

**B**

Consideration of the other business and financial records the Secretary seeks need not detain us inasmuch as the district court may provide for the deletion of the names of Stevens' non-supervisory employees. This type of information is routinely furnished in government investigations of possible violations of the law, and the appellees have adduced no evidence that its disclosure will infringe their first amendment rights. Indeed, similar information was produced in the investiation under consideration in NAACP v. Alabama, 357 U.S. 449 (1958), and ultimately resistance was offered only to the production of membership lists. For

the reasons stated in Part A, dealing with contributors, we believe that the Secretary is entitled to subpoena the business records and minutes of the committees and to question the individuals associated with the committees and the individual who solicited funds.

## VI

In summary, our exclusion of the disclosure of the names of Stevens' non-superviaory employees who are either members of, or contribute to, the committees sufficiently protects the associational rights of the appellees. The governmental interest served by the Secretary's statutory investigation and the relationship of this interest to the information he seeks justify enforcement of the subpoenas subject to the restriction we have mentioned.

We recognize, however, that these proceedings are part of a broader investigation that may disclose that some non-supervisory employees are engaged in activities that subject them to the requirements of the Act. Also, future events may establish that enforcement of the subpoenas does in fact deter contributors from supporting the committees because of economic or other forms of reprisal. Developments such as these would allow either the appellees or the Secretary to seek in the district courts restriction or amplification of these and subsequent subpoenas. *Cf.* Buckley v. Valeo, 424 U.S. 1, 74 (1976).

We affirm the judgments of the district courts to the extent that they deny enforcement of those parts of the subpoenas that require disclosure of the names of Stevens' non-supervisory employees. We vacate the judgments to the extent that they deny enforcement of the subpoenas with respect to the other information that the Secretary seeks. The

cases are remanded to the respective district courts for further proceedings consistent with this opinion. Each party shall bear its own costs.

## APPENDIX E

## JUDGMENT

**United States Court of Appeals**

**for the**

**Fourth Circuit**

**No. 80-1490**

Ray Marshall, Secretary of Labor,
United States Department of Labor, Appellant,

v.

Stevens People and Friends for
Freedom, and E.C. (Mildred) Ramsey, Appellees,

Amalgamated Clothing and Textile
Workers Union, AFL-CIO, CLC, Amicus Curiae.

Appeal from the United States District Court for the _____ District of South Carolina.

This cause came on to be heard on the record from the United States District Court for the _____ District of South Carolina, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed as to the extent that they deny enforcement of those parts of the subpoenas that require disclosure of the names of Stevens' non-supervisory employees. The judgments of the district courts are vacated to the extent that they

deny enforcement of the subpoenas with respect to the other information that the Secretary seeks and the case is remanded to the United States District Court for the district of South Carolina, at Greenville, for further proceedings consistent with the opinion of this court filed herewith.

s/s William K. Slate II

CLERK

## APPENDIX F

## UNITED STATES COURT OF APPEALS
## FOR THE FOURTH CIRCUIT

**No. 80-1490**

Ray Marshall, etc.,

Appellant,

versus

Stevens People and Friends
for Freedom, et al,

Appelies,

Amalgamated Clothing and Textile
Workers Union, AFL-CIO, CLC,

Amicus Curiae.

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No. 80-1715

Ray Marshall, etc.,

Appellant,

versus

John G. Hutchens,

Appellee.

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No. 80-1716

Ray Marshall, etc.,

Appellant,

versus

J. P. Stevens Employees
Education Committee, et al,

Appellees.

## ORDER

Upon consideration of the appellees' petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Butzner for a panel consisting of Judge Butzner, Judge Phillips, and Judge Murnaghan.

For the Court,

CLERK

# Opposition

Office - Supreme Court, U.S.
FILED
JAN 25 1982
ALEXANDER L. STEVAS,
CLERK

Nos. 81-924 and 81-939

# In the Supreme Court of the United States

OCTOBER TERM, 1981

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J. P. STEVENS EMPLOYEES EDUCATION COMMITTEE, ET AL., PETITIONERS

*v.*

RAYMOND J. DONOVAN, SECRETARY OF LABOR

---

E. C. MILDRED RAMSEY AND STEVENS PEOPLE AND FRIENDS FOR FREEDOM, PETITIONERS

*v.*

RAYMOND J. DONOVAN, SECRETARY OF LABOR

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

---

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## QUESTION PRESENTED

Whether the court of appeals correctly held that certain portions of subpoenas issued by the Secretary of Labor as part of an investigation of possible violations of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 *et seq.*, must be enforced.

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# In the Supreme Court of the United States

OCTOBER TERM, 1981

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No. 81-924

J. P. STEVENS EMPLOYEES EDUCATION COMMITTEE, ET AL., PETITIONERS

*v.*

RAYMOND J. DONOVAN, SECRETARY OF LABOR

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No. 81-939

E. C. MILDRED RAMSEY AND STEVENS PEOPLE AND FRIENDS FOR FREEDOM, PETITIONERS

*v.*

RAYMOND J. DONOVAN, SECRETARY OF LABOR

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*ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT*

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## BRIEF FOR THE RESPONDENT IN OPPOSITION

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1d-20d)[1] is not yet reported. The opinion of the district court in No. 81-924 (81-924 Pet. App. 38-83) and

[1] Unless otherwise noted, "Pet. App." refers to the appendix to the petition in No. 81-939.

the opinion of the district court in No. 81-939 (Pet. App. 1b-7b) are unreported.

## JURISDICTION

The judgment of the court of appeals (Pet. App. 1e-2e) was entered on August 4, 1981. A petition for rehearing was denied on September 16, 1981 (Pet. App. 1f-2f). The petitions for a writ of certiorari were filed on November 16, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. These cases, which were consolidated on appeal, arose when the Secretary of Labor petitioned the district court for enforcement of administrative subpoenas issued under 29 U.S.C. 521(b) as part of an investigation of possible violations of 29 U.S.C. 433, a provision of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. (& Supp. III) 401 *et seq.*

29 U.S.C. 433 was enacted to curb abuses stemming from management's use of third parties to influence or spy on employees in matters related to the exercise of their right to organize and bargain collectively. Among other things, that statute provides that if an employer and any other "person" enter into an agreement or arrangement either to influence employees in the exercise of those rights or to provide certain information to the employer, both parties to the agreement must report its existence and its terms to the Secretary of Labor. 29 U.S.C. 433(a)(4), (b). The statute also provides that certain related expenditures must be reported. See 29 U.S.C. 433(a)(1)-(3), (5).

In order to facilitate enforcement of this and other provisions of the LMRDA, Congress gave the Secretary of Labor broad investigatory powers. Under 29 U.S.C. 521, which incorporates provisions of the Federal Trade Commission Act (15 U.S.C. (& Supp. IV) 49, 50), the Secretary is empowered to issue subpoenas requiring "the attendance and testimony of witnesses and the production of * * * documentary evidence relating to any matter under investigation." Evidence obtained by the Secretary pursuant to subpoena may not be made public without his authorization. 15 U.S.C. (& Supp. III) 50; 29 U.S.C. 521. It is the position of the Department of Labor that the names of an organization's members and contributors subpoenaed as part of an investigation of possible violations of 29 U.S.C. 433 are exempt from public disclosure under Exemption 7 of the Freedom of Information Act, 5 U.S.C. 552(b)(7).

2. Two subpoenas are at issue in No. 81-939. The first is a subpoena duces tecum issued to "Stevens People and Friends for Freedom," an organization of employees of J.P. Stevens and Co., Inc., who oppose unionization of the company's textile mills. That subpoena required the production of lists of contributors to the organization, as well as its financial records, correspondence, minutes of meetings, and any agreements with J.P. Stevens or other specified organizations (Pet. App. 1b). The second subpoena was issued to E.C. Mildred Ramsey, chairperson of "Stevens People and Friends for Freedom," and sought her testimony concerning possible violations of the LMRDA (*id.* at 2b).

When both Ramsey and her organization failed to respond to the subpoenas, the Secretary of Labor petitioned the United States District Court for the Eastern District of North Carolina, pursuant to 29

U.S.C. 521, for an order of enforcement (Pet. App. 1b). Ramsey and the organization (petitioners in No. 81-939) then moved to quash the subpoenas on First Amendment grounds (*id.* at 3b).[2] The district court quashed the subpoenas in their entirety, stating that enforcement "could conceivably have a chilling effect" on petitioners' First Amendment rights (*id.* at 4b).

3. The subpoenas at issue in No. 81-924 are similar to those in the case just discussed. The Secretary of Labor issued a subpoena duces tecum to the "J.P. Stevens Employees Education Committee," an association of J.P. Stevens' employees opposed to unionization. The subpoena required the production of information concerning the Committee's contributors, its financial records and correspondence with its contributors, as well as documents relating to J.P. Stevens and Co., Inc., and other specified organizations and individuals (81-924 Pet. App. 103-107). In addition, subpoenas ad testificandum were issued to five individuals associated with the Committee (*id.* at 7, 42). The subpoenas stated that the individuals'

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[2] Petitioners did not submit any affidavits or testimony to prove that enforcement of the subpoenas would have the chilling effect they claimed. Petitioners did submit as attachments to their motion two hand-written notes alleged to be threats upon Ramsey's life and an advertisement in a St. Louis newspaper offering to sell the names of firms and individuals—gleaned from records of the Missouri Secretary of State—who had donated money to oppose a local right-to-work law. However, petitioners provided no evidence of how or when Ramsey received the threats and no evidence connecting them to union partisans. Similarly, there was no connection drawn between the advertisement in the St. Louis paper regarding opposition to a local right-to-work law and petitioners' opposition to the unionization of J.P. Stevens' mills in South Carolina.

testimony was sought in connection with an investigation to determine whether J.P. Stevens and Co., Inc., the J.P. Stevens Employees Education Committee, Stevens People and Friends for Freedom, and others had violated provisions of the LMRDA (*id.* at 108-109).

When the Committee and the individuals subpoenaed (petitioners in No. 81-924) failed to respond, the Secretary petitioned the United States District Court for the Eastern District of North Carolina for enforcement (81-924 Pet. App. 42). Petitioners moved to quash the subpoenas, claiming, among other things, that the subpoenas violated their First Amendment (*id.* at 42-43).

The district court granted the motions to quash (81-924 Pet. App. 39). Balancing petitioners' First Amendment interest in avoiding disclosure[8] against the Secretary's legitimate need for the information

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[8] In support of their claim that enforcement of the subpoenas would have a chilling effect upon the exercise of their First Amendment rights, petitioners relied upon the same evidence as petitioners in No. 81-939, as well as (1) an unverified letter from the secretary of a contributor stating that she had been threatened and harassed after her employer was subpoenaed to testify about his contribution, and (2) affidavits by two officials of the J.P. Stevens Employees Education Committee stating that the union had boycotted businesses that had supported J.P. Stevens and Co., Inc., and that the union had a reputation for violence (81-924 Pet. App. 65-67). Although petitioners offered no evidence that the names of the organization's members and contributors would not be kept confidential if revealed to the Secretary of Labor pursuant to subpoena, the district court found that petitioners had "shown a 'reasonable probability' that economic and physical reprisals will occur upon disclosure of membership and contributors list to the Secretary" (*id.* at 67).

sought, the court found that the interests were roughly equivalent in weight and held that petitioners' constitutionally protected interest consequently must prevail (*id.* at 79-83).

4. The court of appeals reversed the orders of the district court in both cases except insofar as they permitted petitioners' refusal to disclose the identities of non-supervisory J.P. Stevens employees who were members of or contributors to the petitioner organizations (Pet. App. 1e-2e). After first rejecting the argument that the Secretary of Labor lacked statutory authority to issue the subpoenas (Pet. App. 8d-12d), the court of appeals turned to petitioners' First Amendment claim. The court accepted "the district court's findings about the chilling effects of disclosure" (*id.* at 12d), and it therefore looked to the standards set out in *Buckley* v. *Valeo*, 424 U.S. 1, 64-65 (1976), for determining the constitutionality of government action requiring the disclosure of information when that disclosure would have an incidental effect upon the First Amendment right to freedom of association. Under that test, compelled disclosure is permissible if the government's interest in obtaining the information sought is able to survive "exacting scrutiny" and if there is a " 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed" (*ibid.*).

After stating the applicable test, the court of appeals divided the information sought by the subpoenas into three categories: (1) the identities of non-supervisory J.P. Stevens employees who were members of or contributors to the petitioner organizations; (2) the identities of other members and contributors; and (3) the organizations' business and

financial records (Pet. App. 13d-14d). The court held that disclosure of information in the first category—the identities of non-supervisory employees—could not be compelled because the Secretary's investigative authority was limited by statute to measures not inconsistent with the right of non-supervisory employees to refrain from union organizational activities and to engage in concerted activities for their mutual aid (*id.* at 14d-15d). See 29 U.S.C. 157.

By contrast, the court of appeals held that the compelled disclosure of the identities of other contributors was constitutionally permissible (Pet. App. 15d-18d). The court noted Congress' finding that undisclosed contributions by employers to groups seeking to influence employees in the exercise of their right to organize and bargain collectively had interfered with the employees' right to exercise those rights freely (*id.* at 16d). The court held that the disclosure of such contributions, which is required by 29 U.S.C. 433, served "important governmental interests" and that those interests were "substantially related" to the information in question (Pet. App. 17d-18d).

The court of appeals also held that the subpoenas had properly sought disclosure of the petitioner organizations' business and financial records (Pet. App. 18d-19d). "This type of information is routinely furnished in government investigations of possible violations of the law," the court stated, "and the [petitioners] have adduced no evidence that its disclosure will infringe their first amendment rights" (*id.* at 18d).

## ARGUMENT

The portions of the decision of the court of appeals challenged by petitioners are correct and do not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. The general rule for judicial enforcement of an administrative subpoena is well established: "it is sufficient if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant." *United States* v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950). See also *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186 (1946).[4]

There are additional requirements where the disclosure sought would impinge upon First Amendment rights. In such cases, if the parties resisting disclosure establish "a reasonable probability that the compelled disclosure * * * [would] subject them to threats, harassment, or reprisals from either Government officials or private parties" (*Buckley* v. *Valeo*, *supra*, 424 U.S. at 74), then disclosure is permitted only if there are "governmental interests sufficiently

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[4] The challenged subpoenas meet all these requirements. The investigation is clearly within the authority of the Department of Labor. 29 U.S.C. 521 provides that "the Secretary shall have power, when he believes it necessary in order to determine whether any person has violated or is about to violate" the LMRDA, "to make an investigation" (29 U.S.C. 521(a)) and to issue subpoenas (29 U.S.C. 521(b)). The subpoenas here detail with particularity the financial records, documents, and testimony sought. And the information sought by the subpoenas is more than "reasonably relevant" to the Secretary's investigation since it is directly related to possible violations of 29 U.S.C. 433.

important to outweigh" the effect on First Amendment rights (*id.* at 66), as well as a " 'relevant correlation' or 'substantial relation' " between those interests and the information sought (*id.* at 64, quoting *NAACP* v. *Alabama*, 357 U.S. 449, 463 (1958)). See also *Nixon* v. *Administrator of General Services*, 433 U.S. 425, 467 (1977); *Kusper* v. *Pontikes*, 414 U.S. 51, 58-59 (1973); *United States* v. *O'Brien*, 391 U.S. 367, 376-377 (1968); *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960).

Applying this test, the court of appeals correctly held that compulsory disclosure of the bulk of the information sought by the subpoenas was not constitutionally barred.[6] First, the government has an important interest in enforcing compliance with the reporting requirements of the LMRDA. That statute resulted from years of congressional investigation of serious abuses in the labor-management field, including management's use of third parties to influence employees in the exercise of their collective bargaining rights. See Beaird, *Reporting Requirements*

[6] Although the court of appeals based its decision on other grounds, it seems apparent that petitioners' First Amendment claim should have been rejected for failure to satisfy the threshold requirement of showing "a reasonable probability" that enforcement of the subpoenas would "subject them to threats, harassment, or reprisals from either Government officials or private parties." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 74. Petitioners adduced evidence, albeit slight (see notes 2 and 3, *supra*), that *public* disclosure of the information sought by the subpoenas would subject members and contributors to threats, harassment, and reprisals from union sympathizers, but they made no showing whatsoever that information furnished to the Department of Labor pursuant to subpoena would not be kept confidential. Nor did they contend that disclosure would result in threats, harassment, or reprisals by government officials.

*for Employers and the Labor Relations Consultants in the Labor Management Reporting and Disclosure Act of 1959*, 53 Geo. L.J. 267 (1965). The need for legislation requiring disclosures by those who make agreements to persuade employees on behalf of an employer was described in the Senate report (S. Rep. No. 187, 86th Cong., 1st Sess. 10-11 (1959)):

> [T]he Committee on Labor and Public Welfare has received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their choice, a right guaranteed by the National Labor Relations Act. Sometimes these expenditures are hidden behind committees or fronts; however the expenditures are made, they are usually surreptitious because of the unethical content of the message itself. * * * These expenditures may or may not be technically permissible under the National Labor Relations or Railway Labor Act, or they may fall in a gray area. In any event, where they are engaged in they should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concommitant [*sic*] obligation to insure the free exercise of them.

Thus, enforcement of the LMRDA's disclosure provisions protects First Amendment rights by safeguarding the right of employees to associate freely.

Second, there is clearly a " 'relevant correlation' or 'substantial relationship' " between the government's interest in enforcing the LMRDA's reporting requirements and the information sought by the subpoenas. The avowed mission of the petitioner organizations is to influence employees in the exercise of their right

to organize and bargain collectively, and both organizations have taken positions consistent with management's. By examining lists of their contributors and their financial and business records, the government may be able to determine whether any violations of the LMRDA's reporting requirements have occurred.

Petitioners in No. 81-939 contend (Pet. 10), however, that the government could obtain the information it needs by less restrictive means and that the subpoenas therefore infringe First Amendment rights unnecessarily. Petitioners suggest (Pet. 10) that the government should have instead subpoenaed the records of the J.P. Stevens company, but the inadequacy of that alternative is apparent. The annual expenditures of J.P. Stevens & Co., Inc., are huge and, as Congress found in enacting the LMRDA, management contributions to anti-union groups are frequently "laundered" by channelling them through other friendly organizations or individuals. See S. Rep. No. 187, 86th Cong., 1st Sess. 10-11 (1959). Thus, tracing every expenditure of J.P. Stevens & Co., Inc., that might have found its way to the petitioner organizations would have been virtually impossible. On the other hand, tracing back to their source any suspicious contributions received by the petitioner organizations would be a far more manageable task. Furthermore, that course of action might reveal illegal contributions by companies or persons other than or in addition to J.P. Stevens.

2. Petitioners contend (81-924 Pet. 21-26; 81-939 Pet. 17-22) that the court of appeals erred in drawing a distinction between non-supervisory personnel employed by J.P. Stevens and other contributors to the organizations whose records were subpoenaed. In the government's view, the First Amendment does not preclude disclosure of any of the information

sought by the subpoenas. We have already explained why disclosure of the bulk of the information sought by the subpoenas was not constitutionally barred, and we believe that disclosure of the identities of J.P. Stevens non-supervisory personnel was permissible for the same reasons. We have not, however, petitioned for a writ of certiorari with respect to that portion of the court of appeals' judgment. Thus, while we disagree with the distinction drawn by the court of appeals, that error certainly provides no ground for granting the present petitions.

Furthermore, it must be acknowledged that public disclosure[6] of the identities of J.P. Stevens non-supervisory employees might have a greater impact upon their First Amendment interests than upon those of most other individuals. Employees of J.P. Stevens obviously have a larger stake in the outcome of unionization struggles at the company's mills and therefore a greater interest in expressing their views. In addition, the danger of reprisals against such individuals by those favoring unionization may be greater as well. Thus, the distinction drawn by the court of appeals, while not constitutionally required, is not wholly without rational support.

Petitioners also maintain (81-924 Pet. 22-26; 81-939 Pet. 17-20) that the court of appeals' decision infringes rights enjoyed under the National Labor Relations Act by employees of companies other than J.P. Stevens. In particular, petitioners contend (81-924 Pet. 25-26; 81-939 Pet. 19) that the decision impairs those employees' right to organize and "en-

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[6] As noted (see note 5, *supra*), there is no reason to believe that the identities of members of or contributors to the petitioner organizations would be released to the public if disclosed pursuant to subpoena.

gage in other concerted activities for the purpose of * * * mutual aid or protection." 29 U.S.C. 157. This argument is insubstantial. Far from impairing employees' rights under the NLRA, investigations such as those that yielded the subpoenas issued by the Secretary serve to protect those rights. By enforcing compliance with the LMRDA's reporting requirements, such investigations inform employees about possible interference with their rights, thus enabling them to take corrective action, and may have a deterrent effect upon those who might otherwise engage in such interference. See S. Rep. No. 187, 86th Cong., 1st Sess. 10-11 (1959); *United States* v. *Budzanoski*, 462 F.2d 443, 449-450 (3d Cir.), cert. denied, 409 U.S. 949 (1972).

In an analogous context, the Court has held that rights similar to those asserted by petitioners are sometimes outweighed by other objectives of federal labor legislation. In *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969), it was argued that NLRB subpoenas issued during a union election campaign and requiring disclosure of the names and addresses of employees violated the NLRA because the disclosure might subject the employees to harrassment. The Court rejected that contention, holding that the NLRB was permitted to conclude that "the problems that union solicitation [might] present" were outweighed by the benefits of giving unions equal access to information already possessed by management and thereby promoting "the fair and free choice of bargaining representatives" (*ibid.*). See also *NLRB* v. *Cone Mills Corp.*, 419 F.2d 394 (4th Cir. 1969), cert. denied, 397 U.S. 1040 (1970); *NLRB* v. *Hanes Hosiery Division-Hanes Corp.*, 384 F.2d 188 (4th Cir. 1967), cert. denied, 390 U.S. 950 (1968).

3. Finally, petitioners in No. 81-939 contend (Pet. 11-17) that the decision of the court of appeals conflicts with *Familias Unidas* v. *Brisco*, 619 F.2d 391 (5th Cir. 1980); *Black Panther Party* v. *Smith*, 661 F.2d 1243 (D.C. Cir. 1981); and *Baldwin* v. *CIR*, 648 F.2d 483 (8th Cir. 1981). In fact, however, no conflict exists.

In *Familias Unidas* v. *Briscoe*, *supra*, the court held unconstitutional a state statute authorizing a judge to order public disclosure of the membership of any organization that he considered to be engaged in activities designed to interfere with the peaceful operation of the public schools. That case, however, involved competing interests significantly different from those at stake here. In *Familias Unidas*, the statute required *public* disclosure of the membership lists. Indeed, the very purpose of disclosure was to visit "public scrutiny and opprobrium" upon individuals who had not engaged in illegal activity and thereby to deter conduct protected by the First Amendment (619 F.2d at 400). Here, the subpoenas required disclosure to government agents only, and assurances were provided that sensitive information, such as the names of contributors, would not be publicly revealed. In addition, disclosure was sought as part of an investigation of possible illegal conduct.

In *Black Panther Party* v. *Smith*, *supra*, the party and individuals associated with it brought suit against various federal agencies and past and present federal government officials alleging an unlawful conspiracy to destroy the party and violate individuals' rights. The complaint was dismissed with respect to the party for refusing to obey discovery orders, including one requiring that the names of party leaders be revealed. The court of appeals

reversed. It stated that the party's First Amendment interest in withholding the names of its leaders had to be balanced against the defendants' need for that information (661 F.2d at 1264-1270), and it held that the district court's opinion did not "reflect the careful analysis" of the competing interests that the case required (*id.* at 1269). It therefore remanded so that the district court could undertake that analysis (*id.* at 1269-1270).

This holding clearly is not inconsistent with the decision below, which was reached after the court of appeals carefully balanced the interests at stake. Petitioners incorrectly state (81-939 Pet. 16) that "[t]he plaintiffs in *Black Panther* were excused from the requirement that they disclose membership lists even though they had voluntarily initiated litigation against the government." In fact, the court in *Black Panther Party* expressly recognized that disclosure could be ordered on remand after the district court conducted the analysis required (661 F.2d at 1270). Petitioners also incorrectly assert (Pet. 16, quoting 661 F.2d at 1268) that "[t]he D.C. Circuit held that if 'there is some probability that the disclosure will lead to reprisal or harassment,' then disclosure cannot be compelled." However, what the panel majority stated in dictum in *Black Panther Party* is that disclosure is barred only if there is "some probability that [it] will lead to reprisal and harassment" *and* those seeking disclosure cannot demonstrate that the information is "crucial" to their case and is unavailable from alternative sources (661 F.2d at 1268). While we do not endorse these dicta, there is nothing to suggest that its application would lead to a contrary result in the present case.

*Baldwin* v. *CIR*, *supra*, is analogous to *Black Panther Party* rather than the present case. In *Baldwin* a deficiency redetermination suit was filed by a taxpayer who claimed to be a clergyman of a church entitled to tax exemption. The Tax Court dismissed the suit because the taxpayer refused on First Amendment grounds to answer certain interrogatories, including those requesting the names of the church's members and contributors. Finding that the Tax Court had "failed to analyze [the taxpayer's] claims of First Amendment privilege" and had given them "only cursory consideration" (648 F.2d at 488), the court of appeals vacated the dismissal and remanded so that the Tax Court could give those claims "plenary consideration" (*ibid.*). Thus, *Baldwin* does not conflict with the decision below, in which petitioner's claims were carefully considered.[7]

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[7] Petitioners in No. 81-924 also contend (Pet. 29-35) that the Secretary of Labor lacked statutory authority to subpoena the records of the "J.P. Stevens Employees Education Committee" because that organization is not a "person" within the meaning of 29 U.S.C. 433(b). Under that provision, a report must be filed by every "person" who makes an agreement or arrangement with an employer either to persuade employees concerning the exercise of their right to organize and bargain collectively or to supply the employer with certain information.

Petitioners' argument is plainly without merit, for as both the court of appeals and the district court held (81-924 Pet. App. 51-52) the Secretary is empowered by 29 U.S.C. 521 to subpoena relevant information from any organization or person, including those not required to file a report. See *Goldberg* v. *Battles*, 196 F.Supp. 749, 754 (E.D. Pa. 1961), aff'd, 299 F.2d 937 (3d Cir. 1962).

Petitioners also maintain (81-924 Pet. 35-37) that even if the Secretary was authorized to subpoena documents from the J.P. Stevens Employees Education Committee, he exceeded

## CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 1982

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his authority in requiring production of the documents listed in the subpoena. In fact, however, the documents listed in the subpoena are precisely the sort commonly needed to investigate possible violations of 29 U.S.C. 433; since the Secretary is authorized to conduct such investigations, disclosure of such documents must have been contemplated by Congress. Thus, contrary to petitioners' claim (81-924 Pet. 35-36) there is no parallel between the subpoenas in this case, which formed part of a narrowly focused investigation plainly authorized by statute, and the questions found to violate the First Amendment in *Sweezy* v. *New Hampshire*, 354 U.S. 234 (1957), where a witness was held in contempt for refusing to answer questions asked by the state attorney general pursuant to a broad legislative resolution directing him to determine whether there were subversive persons in the state. Whereas Chief Justice Warren's plurality opinion in *Sweezy* questioned whether "the legislature wanted the information the Attorney General attempted to elicit" (*id.* at 254), there is no question about the Secretary of Labor's statutory mandate to obtain the information sought by the subpoenas at issue here.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1982 364866 709

# Petitioner's Reply Brief



FILED
FEB 5 1982
ALEXANDER L. STEVAS,
CLERK

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## PETITIONERS' REPLY TO BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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## I.

## THE SECRETARY'S BRIEF MISSTATES THE CASE TO THE PREJUDICE OF PETITIONERS

Respondent herein has voluntarily chosen to consolidate his brief in opposition to the granting of certiorari in the instant case together with a separate case in which a petition for writ of certiorari had been filed (No. 81-924). The result is a pot pourri of facts, law, and argument juggled between two separate cases. This questionable presentation, coming as it did after two eleventh hour extensions of time, has placed petitioners in the untenable position of sorting out the confused position of respondent. This confusion ought not to work to petitioners' detriment, as the facts in issue and the grave threat to fundamental constitutional law is clear. The Court of Appeals decision is reported at 108 LRRM 2024.

## II.

## THE SECRETARY'S BRIEF IN OPPOSITION GLOSSES OVER THE WEAKNESS OF HIS POSITION WITH FACTUAL ERRORS

By preparing a *combined* brief for Case Number 81-939 (the instant case) along with Case No. 81-924, the Solicitor General attempts to defend and perpetuate the same errors made by the Court of Appeals. The facts of the two cases consolidated by the Fourth Circuit, and by the Solicitor General here, are *not* identical. The people involved in the South Carolina Stevens People and Friends for Freedom

(hereinafter "SPFF") are *not* the same as the people involved in the North Carolina J.P. Stevens Employees Education Committee. Further, the evidence indicates that perhaps the petitioner in No. 81-924 may have accepted remuneration from unrelated employers, but Respondent was unable to point to any similar evidence that Mildred Ramsey and Stevens People and Friends for Freedom have, for they have not. The Solicitor General's confusion extends even to the court where Petitioners' case arose. At the bottom of page 3 of his brief, the Solicitor General states that the Secretary of Labor petitioned the United States District Court for the *Eastern District of North Carolina* for enforcement of his subpoenas against Mildred Ramsey and Stevens People and Friends for Freedom (hereinafter "SPFF"). Actually, the Secretary brought his suit in the United States District Court for the *District of South Carolina*. Thus, he attempts to conceal the fact that two distinct district courts had ruled that his subpoenas of workers were unconstitutional, one in South Carolina and one in North Carolina.

Indeed, at pages 14-16 of his brief, the Secretary attempts to distinguish *Black Panther Party v. Smith*, 661 F.2d 1243 (D.C. Cir. 1981); *Baldwin v. Commissioner*, 648 F.2d 483 (8th Cir. 1981); and *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), by baldly asserting that these cases only require that "careful consideration" be given to First Amendment arguments such as those advanced by Mildred Ramsey and SPFF, and that the Court of Appeals had given careful consideration to the First Amendment claims advanced in this case. The Court of Appeals, like the Solicitor General, consolidated the two cases and confused the facts. Most of the factual discussion in the Court of Appeals decision relates to the "companion" case (No. 81-924), not the instant case.

This clearly refutes the Secretary's assertion that the Court of Appeals gave "careful consideration" to the important First Amendment claims of Mildred Ramsey and SPFF.

## III.

## RESPONDENT PERPETUATES THE INADEQUACY OF HIS POSITION BY SHIFTING THE BURDEN OF PROVING CONSTITUTIONALITY ONTO PETITIONERS

At page 11 of his brief the Solicitor General contends that the Secretary of Labor could not have obtained the information he needs by *less restrictive means*, *viz.*, subpoenaing J.P. Stevens Company records, because "the inadequacy of that alternative is apparent." It appears that the Secretary is attempting to argue new facts in the Supreme Court.[1] There is nothing in the District Court record to show that this

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[1]The only "evidence" cited by the Secretary to justify his subpoenas of Mildred Ramsey and SPFF is a 23-year-old committee report citing "evidence in prior hearings that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization." S. Rep. No. 187, 86th Cong., 1st Sess. 10-11 (1959), *cited at* page 10 of the Secretary's brief. Legislative committee reports may certainly be used to show legislative intent, but using "legislative findings of fact" as substitutes for evidence in court violates the Bill of Attainder Clasue. Art. I, §9, cl. 3. In *United States v. Brown*, 381 U.S. 437 (1965), this Court held that the "command of the Bill of Attainder Clause" is that "a legislature can provide that persons possessing certain characteristics must abstain from certain activities, but must leave to other tribunals the task of deciding who possesses those characteristics." *Brown*, 381 U.S. at 454 n.29. *Brown* dealth with a section of the Labor-Management Reporting and Disclosure Act, the same statute issue here.

alternative, or other possible alternatives, would be inadequate.

In a case of this kind where "exacting scrutiny" is required, *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976), the burden is on the *government* to justify its action and to show that it cannot obtain the information it needs by less restrictive means. In fact, action infringing the First Amendment has been held to be presumptively unconstitutional. *Rosen v. Port of Portland*, 641 F.2d 1243, 1246 (9th Cir. 1981). Since the First Amendment primarily exists to ensure protection of political views through the right of association, *Griswold v. Connecticut*, 381 U.S. 479, 483 (1964), *citing to NAACP v. Alabama*, 357 U.S. 449, 462 (1958), it protects equality of access and prevents censure on the basis of content, *Police Department of Chicago v. Mosley*, 408 U.S. 92 (1972). In the instant case, the message petitioners have tried to convey is "freedom to choose."

Contrary to the Secretary's position here, it is *not* sufficient to strip First Amendment rights from citizens by showing that less restrictive means are less *convenient* for the government. *Grayned v. City of Rockland*, 408 U.S. 104, 114-118 (1972) (government must show "weighty reasons"); *United States v. O'Brien*, 391 U.S. 367, 377 (1968). The Secretary's position cannot be justified merely by a showing of some legitimate government interest. *Buckley*, 424 U.S. at 64. In *Selfridge v. Carey*, No. 81-CV-1005 (N.D.N.Y. Sep. 22, 1981), *aff'd*, No. 81-8139 (2d Cir. Sep. 22, 1981) the New York governor's cancellation of a rugby game based upon a contention that the South African rugby team would incite riot and destruction of property was held to violate the First Amendment and enjoined because less "restrictive means to protect the public and players from possible disturbances" were available. Slip Op. at 6. The First Amendment guarantees that the burden of proof is properly positioned and

petitioners insist that if the South African rugby team is entitled to the First Amendment right of association, law-abiding American workers are equally entitled.

Further, at page 3 of his brief, the Secretary makes another bald assertion:

> It is the position of the Department of Labor that the names of an organization's members and contributors subpoenaed as part of an investigation of possible violations of 29 U.S.C. 433 are exempt from public disclosure under Exemption 7 of the Freedom of Information Act, 5 U.S.C. 552(b)(7).

The Solicitor General cites no authority to show that this is in fact the Department of Labor's position, nor does he cite any case in which this position has been upheld. In fact, this opinion reflects the same suggestion on non-disclosure as that argued by the Arkansas Attorney General in *Shelton v. Tucker*, 364 U.S. 479, 486 n.6 (1960). That case also presented an unsupported "opinion" on disclosure of names and organizational ties protected by the First Amendment. Moreover, even if the names of members and contributors of SPFF are exempt under the Freedom of Information Act, the Department of Labor would be free to disclose those names if it chose to do so. This Court has held that the Freedom of Information Act is exclusively a *disclosure* statute and affords no private right of action to enjoin agency disclosure. *Chrysler Corporation v. Brown*, 441 U.S. 281 (1979). Furthermore, it is also possible that this information may be informally released (i.e., "leaked") to union partisans.

In order to establish that the compulsory disclosure of the names of SPFF members and contributors will have a "chilling effect" on their exercise of their First Amendment rights, it is *not* necessary to establish that the names *will* be disclosed to union partisans. The mere *possibility* that union

partisans might learn the names would be sufficient to have a chilling effect. This applies to those members of Stevens People and Friends for Freedom who are *not* employed by J.P. Stevens Company as well as to those who are. In fact, the chilling effect will exist even while the names are solely kept on file.

Petitioners' rights were sustained by the district court. The district court legally found a "chilling effect" caused by the Secretary's subpoena and this determination was sustained by the Court of Appeals (Pet. at 12d). The Secretary must respect that conclusion.

## IV.

## THE SECRETARY CONCEDED PETITIONERS' SUBSTANTIVE ARGUMENT THAT THE DISTINCTION MADE BY THE COURT OF APPEALS IS INCONSISTENT WITH THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT COVERAGE OF EMPLOYEES

In the Petition for Certiorari, petitioners contended that under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §523(b), employees of one company have the right to solicit help from employees of other companies in a dispute about union representation, and that the distinction the Court of Appeals drew between J.P. Stevens Company employees and all other persons was inconsistent with this right. (Pet. at 20-22). In the Petition, *Sadlowski v. United Steelworkers of America*, 645 F.2d 1114 (D.C. Cir. 1981), *cert. granted*, 50 U.S.L.W. 3333 (Nov. 2, 1981), was cited,

along with other cases, to support the proposition of protection given employees to associate with other persons. If a candidate for union office can associate with nonmembers of the union, petitioners' right to associate with other workers should similarly be protected. In his brief in opposition, the Secretary ignored this part of petitioners' argument, thereby conceding it. Perhaps it was necessary for him to ignore this part of the argument in order to avoid taking a position inconsistent with the position he may take in *Sadlowski*.

## V.

## CONCLUSION

The grave threat to persons previously entitled to constitutional protection posed by the ruling below and the discrimination leveled against non-union workers argued for in Respondents' brief and articulated by the Court of Appeals, militates for review and rectification by this Court. For these reasons and those stated in their Petition, petitioners respectfully request that the Writ of Certiorari be granted.

Respectfully submitted,

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February 4, 1982

# Amicus Brief

Office - Supreme Court, U.S.
FILED
JAN 18 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-939

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1981

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E.C. MILDRED RAMSEY AND STEVENS PEOPLE AND FRIENDS FOR FREEDOM

*Petitioner,*

v.

RAYMOND J. DONOVAN, SECRETARY, DEPARTMENT OF LABOR

*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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## BRIEF OF AMICUS CURIAE MASTER PRINTERS OF AMERICA IN SUPPORT OF PETITIONERS

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## INTEREST OF AMICUS CURIAE

Master Printers of America (MPA) is a national trade association serving approximately 5,000 non-union or open shop printing industry members throughout the country. MPA's services on behalf of its members include lobbying efforts on behalf of the commercial printing industry, craft training programs, supervisor training workshops, model employee relations manuals, and other programs.

As an association with a significant interest in labor-management affairs, MPA is greatly concerned with the need to preserve the First Amendment rights of its members and

others to associate and speak freely without fear of unwarranted investigation or disclosure by the government. MPA is particularly concerned about the Department of Labor's overbroad enforcement of the Labor Management Reporting and Disclosure Act (LMRDA), which has been used by the Department to seek unwarranted disclosure of association members and contributors. MPA has itself challenged the constitutionality of the Labor Department's application of the LMRDA in two separate court actions. *MPA v. Donovan*, 104 LRRM 2483 (E.D. Va. 1979), *rev'd* 620 F.2d 293 (4th Cir. 1980), *on remand* 105 LRRM 2996 (E.D. Va. 1980), *appeal pending* Case No. 80-1578 (4th Cir.); *Donovan v. MPA*, 108 LRRM 2050 (E.D. Va. 1981). Thus, the *amicus* has a significant interest in supporting the efforts of the petitioners in this case to seek a definitive ruling protecting the First Amendment rights of association members from unjustified governmental intrusion.

## REASONS FOR GRANTING THE WRIT

### I. The Court Of Appeals' Decision Allows Unconstitutional Infringement Of The Right Of Free Association And Unfairly Discriminates Against Non-Employee Association Contributors.

This case presents important First Amendment issues pertaining to overbroad enforcement of the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. §431 *et. seq.* by the Department of Labor. As explained in the Petition for Certiorari, the Court of Appeals' decision permits the Secretary to discover the names of non-employee contributors to an employee association without any evidence of reportable activity. In so holding, the court's opinion directly conflicts with established precedent protecting the right of free association against unjustified government intrusion.

The court's opinion is internally inconsistent as well, since it recognizes and adopts an appropriate constitutional standard in protecting the names of employee members of the association in question, while inexplicably abandoning this Court's holdings when considering the equally important rights of non-employee association contributors. These internal and external conflicts have created considerable confusion for associations like MPA, many of whose members desire some assurance of anonymity in order to avoid retribution from labor organizations. Such associational rights are severely threatened by unwarranted Labor Department enforcement actions typified by the instant case, and the uncertainty caused by the Court of Appeals' decision must be removed.

This Court has repeatedly set forth the appropriate standards to be applied in considering governmental efforts to infringe First Amendment rights. First, a particular disclosure provision must be "substantially related" to a legitimate and compelling state interest. *Gibson v. Florida Legislative Investigative Committee*, 372 U.S. 539 (1963). Second, even when enforcement of a disclosure law has been sufficiently related to a truly compelling state interest, the Supreme Court has nonetheless halted such enforcement if the government has not employed the least restrictive means necessary to accomplish its objective. *Buckley v. Valeo*, 424 U.S. 1, at 64-68 (1976); *Shelton v. Tucker*, 364 U.S. 479 (1960); *see also Boorda v. Subversive Activities Control Board*, 421 F.2d 1142 (D.C. Cir. 1969). The Court has strictly applied these standards because of its recognition that the primary effect of overbroad disclosure laws is to induce members to withdraw from lawful associations and to dissuade others from joining or contributing for fear of exposure of their beliefs. *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958), where the Court held:

> Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

The Court of Appeals' decision with respect to non-employee members and contributors of a lawful association fails to meet the strict scrutiny tests established by this Court. The Secretary's investigation of contributors was not related to a compelling interest in disclosing the presence of unlawful activity, since the Secretary produced no evidence that any reportable activity had occurred. In addition, the Secretary and the Court of Appeals made no effort whatsoever to employ less restrictive means to obtain the allegedly needed information, though such means were clearly available.

The court below sought to meet the "substantial relationship" test by reciting the Secretary's investigative powers and noting Congressional concern over persuader activities not shown to have occurred in the present case. App. D at 15d-17d. However, the mere existence of investigatory powers and a statute regulating specific conduct, without more, cannot support the broad disclosure permitted by the Court of Appeals, as this Court held in *Gibson v. Florida Legislative Investigative Committee*, 372 U.S. 539 (1963); *Bates v. Little Rock*, 316 U.S. 516 (1960); and *NAACP v. Alabama*, 357 U.S. 449 (1958).

In each of these cases, the governmental agencies involved possessed acknowledged investigatory authority not unlike that of the Department of Labor. Each agency was also purportedly seeking to determine whether the defendants were violating specific laws which the government had an interest in enforcing. *See Gibson v. Florida Legislative Investigative Committee*, *supra* (legislative committee attempted to investigate violations of anti-sedition laws); *Bates v. Little Rock*, *supra* (city government investigating municipal licensing law); *NAACP v. Alabama*, *supra* (state attorney investigating association's violations of corporation laws). These showings by the government were insufficient in each case, however. Absent some evidence of cause to believe the associations involved have in fact violated the laws at issue, this Court has consistently refused to permit unrestricted investigators to infringe upon First Amendment rights.

Thus, in *Gibson v. Florida Legislative Investigating Committee*, 372 U.S. 539 (1963), the government sought to discover whether certain members of the NAACP were also members of the Communist Party. The Court conceded the state's legitimate interest in controlling communists, and

further recognized the broad nature of the legislative committee's investigatory powers. *Id.* at 547-549. Nevertheless, the Court found no substantial relation between the intrusive investigation and the state's legitimate interests because the state provided no evidence of communist activity by the NAACP. *Id.* at 551.

For the same reason, the Court of Appeals in this case should have disallowed the Secretary's overbroad subpoena, due to the absence of any evidence that the investigation was substantially and intimately related to the government's interest in deterring persuader activity. The Secretary was required to show some strong link between the conduct of the association he was investigating and the conduct described in the LMRDA. No such connection was ever shown by the Secretary, and the Court of Appeals should therefore have refused to enforce the subpoena. *NAACP v. Alabama*, 357 U.S. 449, 464 (1958).*

Such a result was particularly compelled by the District Court's findings establishing the severe "chilling effect" which the investigation would have on the association's members and contributors, due to the real threat of danger to their lives if the government's subpoenas were enforced. *See*

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*In attempting to distinguish this Court's decisions, the Court of Appeals misplaced the burden of proving unlawful conduct on the part of the association. *See* App. D at 17d, where the court implied that the association was required to "conclusively establish" that its contributors offended no law. The correct standard requires the government to provide some evidence that the association *did* engage in the conduct governed by the statute sought to be enforced. *See Familias Unidas v. Briscoe*, 619 F.2d 391 at 401 (5th Cir. 1980), requiring proof of "illicit conduct." The court of appeals also erred in relying on previous cases which did not require a showing of probable cause for an LMRDA investigation, *see* App. D at 11d, since those cases did not involve any infringement of First Amendment rights.

Petition for Writ of Certiorari at 6. The court below failed to properly balance this chilling effect against the government's tenuous interests.

The Court of Appeals also deviated from this Court's controlling precedent by failing to require the Secretary to pursue his alleged governmental interest in the least restrictive manner possible. As correctly noted by the Petitioner, the Secretary could have achieved his ostensible investigating purpose by subpoenaing the records of the employer in this case, J.P. Stevens & Company. This would have avoided any infrengement on the constitutional rights of other contributors to the association. *See* Petition at 10.

In its consideration of the Petitioner's constitutional challene below, the Court of Appeals completely ignored this failure of the Secretary to choose the least restrictive means necessary to achieve his objectives. The court spoke only of the "substantial relationship" test, thereby allowing the Secretary to violate the second, equally important standard established by this Court. *Buckley v. Valeo*, 424 U.S. 1, at 64-68 (1976); *Shelton v. Tucker*, 364 U.S. 479 (1960).

Thus, the opinion of the court below conflicts with decisions of this and other courts which have properly required the government to use the least restrictive means available when intrusion into association affairs becomes necessary. In *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), for example, the court struck down an overbroad reporting statute on just such grounds stating:

> [T]he disclosure requirement . . . while it is generally related to the effectuation of a permissible state purpose, sweeps too broadly, and therefore, cannot stand. It fails to take stock of the individual members against whom it operates. *Id.* at 400-401.

The Secretary's subpoena, which similarly seeks disclosure of all contributors to the association at issue here, must also be denied enforcement due to the Secretary's failure to tailor his request for information so as to avoid infringing First Amendment freedoms. Those contributors who are not employed by J.P. Stevens are entitled to the same First Amendment freedoms which the Court of Appeals afforded to the company's employees. Petition at 17-20. *Sadlowski v. United Steelworkers of America* 654 F.2d 1114 (D.C. Cir. 1981), *cert. granted*, 50 U.S.L.W. 3333 (Nov. 2, 1981).

## CONCLUSION

The Petition for Certiorari raises important constitutional and statutory questions which merit review by this Court. The Court of Appeals decision conflicts with decisions of this Court and with those of other courts of appeal. For these reasons, the *amicus curiae* strongly supports the petitioner's request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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January 17, 1982